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Presidential Documents

Title 3—

The President

Proclamation 8694 of July 25, 2011

Anniversary of the Americans With Disabilities Act, 2011

By the President of the United States of America

A Proclamation

Generations of Americans with disabilities have improved our country in countless ways. Refusing to accept the world as it was, they have torn down the barriers that prohibited them from fully realizing the American dream. Their tireless efforts led to the enactment of the Americans with Disabilities Act (ADA), one of the most comprehensive pieces of civil rights legislation in our Nation's history. On this day, we celebrate the 21st anniversary of the ADA and the progress we have made, and we reaffirm our commitment to ensure equal opportunity for all Americans.

Each day, people living with disabilities make immeasurable contributions to the diversity and vitality of our communities. Nearly one in five Americans lives with a disability. They are our family members and friends, neighbors and colleagues, and business and civic leaders. Since the passing of the ADA, persons with disabilities are leading fuller lives in neighborhoods that are more accessible and have greater access to new technologies. In our classrooms, young people with disabilities now enjoy the same educational opportunities as their peers and are gaining the tools necessary to reach their greatest potential.

Despite these advancements, there is more work to be done, and my Administration remains committed to ending all forms of discrimination and upholding the rights of Americans with disabilities. The Department of Justice continues to strengthen enforcement of the ADA by ensuring that persons with disabilities have access to community-based services that allow them to lead independent lives in the communities of their choosing. Under provisions of the Affordable Care Act, insurers will no longer be able to engage in the discriminatory practice of denying coverage based on preexisting conditions, and Americans with disabilities will have greater control over their health care choices. And last year, I signed an Executive Order establishing the Federal Government as a model employer for individuals with disabilities, placing a special focus on recruitment and retention of public servants with disabilities across Federal agencies.

Through the ADA, America was the first country in the world to comprehensively declare equality for citizens with disabilities. To continue promoting these principles, we have joined in signing the Convention on the Rights of Persons with Disabilities. At its core, this Convention promotes equality. It seeks to ensure that persons with disabilities enjoy the same rights and opportunities as all people, and are able to lead their lives as do other individuals.

Eventual ratification of this Convention would represent another important step in our forty-plus years of protecting disability rights. It would offer us a platform to encourage other countries to join and implement the Convention. Broad implementation would mean greater protections and benefits abroad for millions of Americans with disabilities, including our veterans, who travel, conduct business, study, reside, or retire overseas. In encouraging other countries to join and implement the Convention, we also could help level the playing field to the benefit of American companies, who already meet high standards under United States domestic law. Improved disabilities

standards abroad would also afford American businesses increased opportunities to export innovative products and technologies, stimulating job creation at home.

Equal access, equal opportunity, and the freedom to make of our lives what we will are principles upon which our Nation was founded, and they continue to guide our efforts to perfect our Union. Together, we can ensure our country is not deprived of the full talents and contributions of the approximately 54 million Americans living with disabilities, and we will move forward with the work of providing pathways to opportunity to all of our people.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Tuesday, July 26, 2011, the Anniversary of the Americans with Disabilities Act. I encourage Americans across our Nation to celebrate the 21st anniversary of this civil rights law and the many contributions of individuals with disabilities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–19285
Filed 7–27–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2 CFR Part 2429

24 CFR Parts 5, 21, 84, 1000

[Docket No. FR–5471–F–01]

RIN 2501–AD54

Implementation of Office of Management and Budget Guidance on Drug-Free Workplace Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD is moving its regulation implementing the governmentwide common rule on drug-free workplace requirements for financial assistance from one title in the Code of Federal Regulations (CFR) to another title. This relocation of the requirements from one CFR title to another responds to directions from the Office of Management and Budget (OMB) to all federal agencies to consolidate into one CFR title all federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification and make no substantive change in HUD policy or procedures for drug-free workplace.

DATES: *Effective Date:* August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington, DC 20410–0500, telephone number 202–708–0667. (This is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D) (41 U.S.C. 701 *et seq.*) (the Act) was enacted on November 18, 1988, as part of the 1988 Omnibus Drug Act. The Act requires that recipients of grants and parties to cooperative agreements provide a drug-free workplace. On January 31, 1989 (53 FR 4946), the federal agencies issued an interim final common rule to implement the Act as it applies to grants. On May 25, 1990 (55 FR 21681), after considering public comment, the federal agencies issued a final common rule.

On January 23, 2002 (67 FR 3266), the federal agencies proposed substantive changes to the governmentwide Debarment and Suspension (Nonprocurement) and governmentwide Requirements for Drug-Free Workplace (Grants) common rule. HUD did not join in the January 23, 2002, publication, but proposed adopting the common rule amendments by separate rule, that was published on July 22, 2002 (67 FR 48006). On November 26, 2003 (68 FR 66534), after considering public comment on the January 23, 2002, common rule and, after HUD considered public comment on its July 22, 2002, proposed rule, the federal agencies, including HUD, published a final rule that updated the common rule on drug-free workplace requirements. Each agency at that time also relocated its drug-free workplace common rule to its own CFR part and removed the drug-free workplace rule from a subpart in the debarment and suspension common rule. HUD's drug-free workplace common rule was moved to 24 CFR part 21.

On May 11, 2004 (69 FR 26276), OMB established Title 2 of the CFR as the new, central location for OMB guidance and agency implementing regulations concerning grants and cooperative agreements. With the establishment of Title 2 of the CFR, OMB announced its intention to replace agencies' common rules with a single set of drug-free workplace requirements, policies, and procedures, referred to as OMB guidance. Through this approach, rather than have each agency issue identical or nearly identical rules based on the common rule, agencies would adopt the OMB guidance through brief regulations that reference the agencies' adoption of the guidance. The establishment of Title 2 of the CFR is intended to assist recipients that do business with multiple federal agencies by creating one title in which recipients can find the agencies' regulations implementing governmentwide requirements governing grants and cooperative agreements that were previously published under many separate CFR titles. OMB began the process of replacing common rules with its guidance by proposing, and later finalizing, governmentwide guidance on nonprocurement suspension and debarment enforcement actions in 2 CFR part 180.

On September 26, 2008 (73 FR 55776), OMB proposed guidance for drug-free workplace requirements in a new CFR part—2 CFR part 182. In addition to proposing the guidance for drug-free workplace requirements, OMB also proposed the format and organizational structure of the requirements that agencies should adopt. The guidance was issued in final form on June 15, 2009 (74 FR 28149). The final guidance directs that each federal agency replace the common rule on drug-free workplace requirements, which the agency previously issued in its own CFR title, with a brief regulation in 2 CFR adopting the governmentwide drug-free workplace policies and procedures.

II. This Final Rule

As the OMB guidance requires, HUD is taking two regulatory actions by this final rule. First, HUD is removing the OMB common rule on drug-free workplace requirements which includes some revisions particular to HUD that are currently codified at 24 CFR part 21. Second, to replace the common rule, HUD is promulgating a new regulation at 2 CFR part 2429 to adopt the governmentwide policies and procedures on drug-free workplaces that are now in the OMB guidance. This rule does not make any substantive changes in the governmentwide drug-free workplace policies and procedures, but rather simply relocates HUD's drug-free workplace requirements to a central location in 2 CFR 2429, and highlights the commonality of these requirements among federal agencies by cross-referencing to OMB's guidance.

III. Findings and Certifications

Justification for Final Rule

HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. HUD does provide, however, in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' In this case, the Department finds that delaying the effective date of this rule in order to solicit prior public comment is unnecessary.

As described in the ''Background'' section of this preamble, this rule is directed to a CFR ''housekeeping'' matter which is moving HUD's governmentwide regulations applicable to drug-free workplace requirements to a new title in the CFR and in streamlined form, as directed by OMB. This rule makes no substantive changes to the drug-free workplace policies and procedures, as currently codified in regulation, and which have been proposed for comment three times and adopted after resolution of the comments received. Since no substantive changes are made by this rule, and the rule would not affect current application and enforcement of drug-free workplace requirements, no public comment is necessary.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and it was not reviewed by OMB. The rule responds to OMB's streamlining direction with respect to drug-free workplace requirements for federal financial assistance, and adds HUD's requirements to those of other federal agencies that are consolidated in one title of the CFR. This rule is solely an administrative simplification that

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because no advance notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(b) for this rule, which moves a set of regulations, without change, from one CFR title to another, the provisions of the Regulatory Flexibility Act do not apply.

Environmental Impact

This rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and HUD regulations at 24 CFR 50.19(c)(1).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the relevant requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (12 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

List of Subjects

2 CFR Part 2429

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 21

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 84

Accounting, Colleges and universities, Grant programs, Hospitals, Non-profit organizations, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, and under the authority of 5 U.S.C. 301, HUD amends the Code of Federal Regulation, Title 2, Subtitle B, chapter XXIV, and Title 24 CFR parts 5, 21, 84 and 1000, as follows:

Title 2—Grants and Agreements

■ 1. Add new part 2429 in Subtitle B, Chapter XXIV, to read as follows:

PART 2429—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

Subpart F—[Reserved]

Authority: 41 U.S.C. 701–707; 42 U.S.C. 3535(d).

§ 2429.10 What does this part do?

This part requires that the award and administration of HUD grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707) (referred to as the Act in this part) that applies to grants. This part:

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for HUD grants and cooperative agreements; and

(b) Establishes HUD policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for governmentwide implementing regulations.

§ 2429.20 Does this part apply to me?

This part, and through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a:

(a) Recipient of a HUD grant or cooperative agreement; or

(b) HUD awarding official.

§ 2429.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures of the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 2429.225	Whom in HUD must a recipient other than an individual notify if an employee is convicted for a violation of a criminal drug statute in the workplace?
(2) 2 CFR 182.300(b)	§ 2429.300	Whom in HUD must a recipient who is an individual notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity?
(3) 2 CFR 182.500	§ 2429.500	Who in HUD is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part?
(4) 2 CFR 182.505	§ 2429.505	Who in HUD is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part?

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, HUD policies and procedures are the same as those in the OMB guidance.

Subpart A—[Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 2429.225 Whom in HUD does a recipient other than an individual notify about a criminal conviction?

A recipient other than an individual who is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each HUD office with which it currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 2429.300 Whom in HUD does a recipient who is an individual notify about a criminal conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each HUD office with which he or she currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 2429.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 2429.500 Who in HUD determines that a recipient other than an individual violated the requirements of this part?

The Secretary or designee is the official authorized to make the determination under 2 CFR 182.500.

§ 2429.505 Who in HUD determines that a recipient who is an individual violated the requirements of this part?

The Secretary or designee is the official authorized to make the determination under 2 CFR 182.505.

Subpart F—[Reserved]

Title 24—Housing and Urban Development

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 2. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d).

■ 3. Revise § 5.105(d) to read as follows:

§ 5.105 Other Federal requirements.

* * * * *

(d) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations at 2 CFR part 2429.

PART 21—[REMOVED]

■ 5. Remove Part 21.

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

The authority citation for part 84 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 7. Revise § 84.13(b) to read as follows:

§ 84.13 Debarment and suspension; Drug-Free Workplace.

* * * * *

(b) Recipients and subrecipients shall comply with the requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*), as set forth at 2 CFR part 2429.

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.;* 42 U.S.C. 3535(d).

■ 9. Revise § 1000.46 to read as follows:

§ 1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 2 CFR part 2429 apply.

Dated: July 15, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–19129 Filed 7–27–11; 8:45 am]

BILLING CODE 4210–67–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1080

[Docket No. CFPB–2011–0007]

RIN 3170–AA03

Rules Relating to Investigations

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (''CFPB'' or ''Bureau''), pursuant to the Consumer Financial Protection Act of 2010, is adopting its Rules Relating to Investigations in order to describe the Bureau's procedures for investigations pursuant to section 1052 of the Act. The Bureau invites interested members of the public to submit written comments to this interim final rule setting forth those rules.

DATES: This interim final rule is effective on July 28, 2011. Written comments must be received on or before September 26, 2011.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0007,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1801 L Street, NW., Washington, DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036, (202) 435–7275.

SUPPLEMENTARY INFORMATION: This discussion contains the following sections:

(a) Background

The Bureau is adopting Rules Relating to Investigations (''Rules'') that implement provisions of the Consumer Financial Protection Act of 2010 (''Act'') [1] that relate to the Bureau's investigations. Specifically, these Rules will govern investigations undertaken pursuant to section 1052 of the Act, 12 U.S.C. 5562, which authorizes the Bureau to investigate whether persons have engaged in conduct that violates any provision of Federal consumer financial law.

In developing these Rules, the Bureau considered the investigative procedures of other law enforcement agencies. Specifically, the Bureau reviewed the procedures currently used by the Federal Trade Commission (''FTC''), the Securities and Exchange Commission (''SEC''), and the prudential regulators for guidance. In light of the similarities between section 1052 of the Act and section 20 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 41 *et seq.,* the Bureau drew most heavily from the FTC's nonadjudicative procedures in constructing the Rules.

The Rules describe a number of Bureau policies and procedures that apply in a nonadjudicative setting. Among other things, these Rules set forth (1) the Bureau's authority to conduct investigations, and (2) the rights of persons from whom the Bureau seeks to compel information in investigations.

In particular, the Rules lay out the Bureau's authority to conduct investigations before instituting judicial or administrative adjudicatory proceedings under Federal consumer financial law. The Rules authorize the Assistant Director of the Division of Enforcement to issue civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony, which may be enforced in district court by either the General Counsel or the Assistant Director of the Division of Enforcement. The Rules also detail the authority of the Bureau's investigators to conduct investigations and hold investigational hearings pursuant to civil investigative demands for oral testimony.

Furthermore, the Rules set forth the rights of persons from whom the Bureau seeks to compel information in an investigation. Specifically, the Rules describe how such persons should be notified of the purpose of the Bureau's investigation. The Rules detail the procedures for filing a petition for an order modifying or setting aside a civil investigative demand, which will be ruled upon by the Bureau Director. They also describe the process for obtaining copies of or access to documents or testimony provided to the Bureau. In addition, the Rules describe a person's right to counsel at investigational hearings.

[1] The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, Public Law 111–203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.* Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes these Rules on behalf of the CFPB.

(b) Section-by-Section Summary

Section 1080.1 Scope

This section describes the scope of the Rules. It makes clear that these Rules only apply to investigations under section 1052 of the Act.

Section 1080.2 Definitions

This section defines several terms used throughout the Rules. Many of these definitions also may be found in section 1051 of the Act.

Section 1080.3 Policy as to Private Controversies

This section states the Bureau's policy of pursuing investigations that are in the public interest. Section 1080.3 is consistent with the Bureau's mission to protect consumers by investigating potential violations of Federal consumer financial law.

Section 1080.4 By Whom Conducted

This section explains that Bureau investigators are authorized to conduct investigations pursuant to section 1052 of the Act.

Section 1080.5 Notification of Purpose

This section provides that a person compelled to provide information to the Bureau or testify in an investigational hearing must be advised of the nature of the conduct constituting the alleged violation under investigation and the applicable provisions of law. This section implements the requirements for civil investigative demands described in section 1052(c)(2) of the Act.

Section 1080.6 Civil Investigative Demands

This section lays out the Bureau's procedures for issuing civil investigative demands. It authorizes the Assistant Director of the Division of Enforcement to issue civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony. This section details the information that must be included in civil investigative demands and the requirement that responses be made under a sworn certificate. Section 1080.6 also authorizes the Assistant Director of the Division of Enforcement to negotiate and approve the terms of compliance with civil investigative demands and grant extensions for good cause. Finally, this section describes the procedures for seeking an order to modify or set aside a civil investigative demand, which will be ruled upon by the Bureau Director.

Section 1080.7 Investigational Hearings

This section describes the procedures for investigational hearings initiated pursuant to a civil investigative demand for oral testimony. It also lays out the roles and responsibilities of the Bureau investigator conducting the investigational hearing, which include excluding unauthorized persons from the hearing room and ensuring that the investigational hearing is transcribed, the witness is duly sworn, the transcript is a true record of the testimony, and the transcript is provided to the designated custodian.

Section 1080.8 Withholding Requested Material

This section describes the procedures that apply when persons withhold material responsive to a civil investigative demand. It requires that they assert a privilege by the production date and, if so directed in the civil investigative demand, also submit a detailed schedule of the items withheld. Section 1080.8 also sets forth the procedures for handling the disclosure of privileged or protected information or communications.

Section 1080.9 Rights of Witnesses in Investigations

This section describes the rights of persons compelled to submit information or provide testimony in an investigation. It details the procedures for obtaining a copy of submitted documents or a copy of or access to a transcript of the person's testimony. This section also describes a witness's right to make changes to his or her transcript and the rules for signing the transcript.

Section 1080.9 lays out a person's right to counsel at an investigational hearing and describes his or her counsel's right to advise the witness as to any question posed for which an objection may properly be made. It also describes the witness's or counsel's rights to object to questions or requests that the witness is privileged to refuse to answer. This section states that counsel for the witness may not otherwise object to questions or interrupt the examination to make statements on the record but may request that the witness have an opportunity to clarify any of his or her answers. Finally, this section authorizes the Bureau investigator to take all necessary action during the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language.

Section 1080.10 Noncompliance With Civil Investigative Demands

This section authorizes the Assistant Director of the Division of Enforcement, the General Counsel, or their delegees, to initiate an action to enforce a civil investigative demand in connection with the failure or refusal of a person to comply with, or to obey, a civil investigative demand. In addition, they are authorized to seek civil contempt or other appropriate relief in cases where a court order enforcing a civil investigative demand has been violated.

Section 1080.11 Disposition

This section explains that an enforcement action may be instituted in federal or state court or through administrative proceedings when warranted by the facts disclosed by an investigation. This section further provides that the Bureau may refer investigations to appropriate federal, state, or foreign government agencies as appropriate. It also authorizes the Assistant Director of the Division of Enforcement to close the investigation when the facts of an investigation indicate an enforcement action is not necessary or warranted in the public interest.

Section 1080.12 Orders Requiring Witnesses To Testify or Provide Other Information and Granting Immunity

This section authorizes the Assistant Director of the Division of Enforcement to request approval from the Attorney General for the issuance of an order requiring a witness to testify or provide other information and granting immunity under 18 U.S.C. 6004. It also sets forth the Bureau's right to review the exercise of these functions, and states that the Bureau will entertain an appeal from an order requiring a witness to testify or provide other information only upon a showing that a substantial question is involved, the determination of which is essential to serve the interests of justice. Finally, this section describes the applicable rules and time limits for such appeals.

Section 1080.13 Custodians

This section describes the procedures for designating a custodian and deputy custodian for material produced pursuant to a civil investigative demand in an investigation. It also states that these materials are for the official use of the Bureau, but, upon notice to the custodian, must be made available for examination during regular office hours by the person who produced them.

Section 1080.14 Confidential Treatment of Demand Material and Non-Public Nature of Investigations

Section 1080.14 explains that documentary materials and tangible things obtained by the Bureau pursuant to a civil investigative demand are subject to the requirements and procedures relating to disclosure of records and information in part 1070 of this title. This section also states that investigations generally are non-public. A Bureau investigator may disclose the existence of an investigation to the extent necessary to advance the investigation.

(c) Procedural Requirements

(1) Regulatory Requirements

The Rules relate solely to agency procedure and practice and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Although the Rules are exempt from these requirements, the Bureau invites comment on them. Because no notice of proposed rulemaking is required, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2) do not apply.

(2) Section 1022(b)(2) Provisions

The CFPB has conducted an analysis of benefits, costs, and impacts [2] and consulted with the prudential regulators, the Department of Housing and Urban Development, the Securities and Exchange Commission, the Department of Justice, and the Federal Trade Commission, including with respect to whether the Rules are consistent with any relevant prudential, market, and systemic objectives administered by such agencies.[3]

The Bureau concludes that, on balance, the Rules are beneficial to consumers and covered persons alike. The Rules do not impose any obligations on consumers or have any direct impact on their access to credit. Conversely, they provide a clear, efficient mechanism for investigating compliance with the Federal consumer financial laws, which benefits consumers because the Rules offer a systematic process for protecting them from unlawful behavior.

The Rules impose certain obligations on covered persons who receive civil investigative demands in Bureau investigations. Specifically, as described above, the Rules set forth the process for complying with or objecting to civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony. The obligations in the Rules stem from express language in the Act. As such, the Rules do not impose additional burdens on covered persons beyond those Congress imposed in the Act. In fact, the Rules implement the statutory requirements and provide clear guidelines to recipients of civil investigative demands, providing a level of clarity and certainty that is beneficial to those obligated under the Act to comply with such demands. Moreover, ensuring compliance with Federal consumer financial law ultimately benefits covered persons by ensuring that scrupulous actors are not competitively disadvantaged in the marketplace.

Furthermore, because section 1052 of the Act and the Rules are largely based on section 20 of the FTC Act and its corresponding regulations, they present an existing, stable model of investigatory procedures that should not impose new compliance costs. The entities subject to the Bureau's jurisdiction are accustomed to complying with these or similar procedures for responding to demands for information or testimony from regulators. Thus, they do not face a significant cost of adjusting to a new procedural landscape for investigations; rather, they benefit from the Bureau's adoption of an existing model.

The Rules contemplate that the Bureau will exercise its discretion to modify demands or extend the time for compliance for good cause. The Bureau can assess the cost of compliance with a civil investigative demand in a particular circumstance and take appropriate steps to mitigate any unreasonable compliance burden, a process providing flexibility that benefits covered persons.

Further, the Rules have no unique impact on insured depository institutions or insured credit unions with less than $10 billion in assets described in section 1026(a) of the Act, and do not have a unique impact on rural consumers.

List of Subjects in 12 CFR Part 1080

Administrative practice and procedure, Banks, Banking, Consumer protection, Credit, Credit unions, Federal Reserve System, Investigations, Law enforcement, National banks, Savings associations, Trade practices.

For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1080 to Chapter X in Title 12 of the Code of Federal Regulations to read as set forth below.

TITLE 12—BANKS AND BANKING

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

PART 1080—RULES RELATING TO INVESTIGATIONS

Sec.

Authority: Pub. L. 111–203, Title X.

§ 1080.1 Scope.

The rules of this part apply to Bureau investigations conducted pursuant to section 1052 of the Act, 12 U.S.C. 5562.

§ 1080.2 Definitions.

For the purposes of this part, unless explicitly stated to the contrary:

Act means the Consumer Financial Protection Act of 2010, as amended, Public Law 111–203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.*

Assistant Director of the Division of Enforcement means the head of the Division of Enforcement or any Bureau employee to whom the Assistant Director of the Division of Enforcement has delegated authority to act under this part.

Bureau means the Bureau of Consumer Financial Protection.

Bureau investigation means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation.

Bureau investigator means any attorney or investigator employed by the

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[2] Section 1022(b)(2)(A) addresses the consideration of the potential benefits and costs of regulation to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services; the impact of proposed rules on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[3] The President's July 11, 2011, Executive Order 13579 entitled ''Regulation and Independent Regulatory Agencies,'' asks the independent agencies to follow the cost-saving, burden-reducing principles in Executive Order 13563; harmonization and simplification of rules; flexible approaches that reduce costs; and scientific integrity. In the spirit of Executive Order 13563, the CFPB has consulted with the Office of Management and Budget regarding this interim final rule.

Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

Custodian means the custodian or any deputy custodian designated by the Bureau for the purpose of maintaining custody of information produced pursuant to this part.

Director means the Director of the Bureau or a person authorized to perform the functions of the Director in accordance with the law.

Division of Enforcement means the division of the Bureau responsible for enforcement of Federal consumer financial law.

Documentary material means the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium, including electronically-stored information.

Electronically stored information (ESI) means any information stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

General Counsel means the General Counsel of the Bureau or any Bureau employee to whom the General Counsel has delegated authority to act under this part.

Person means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Violation means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

§ 1080.3 Policy as to private controversies.

The Bureau shall act only in the public interest and will not initiate an investigation or take other enforcement action when the alleged violation is merely a matter of private controversy and does not tend to affect adversely the public interest.

§ 1080.4 By whom conducted.

Bureau investigations are conducted by Bureau investigators designated and duly authorized under section 1052 of the Act, 12 U.S.C. 5562, to conduct such investigations.

§ 1080.5 Notification of purpose.

Any person compelled to furnish documentary material, tangible things, written reports or answers to questions, oral testimony, or any combination of such material, answers, or testimony to the Bureau shall be advised of the nature of the conduct constituting the alleged violation that is under investigation and the provisions of law applicable to such violation.

§ 1080.6 Civil investigative demands.

(a) *In general.* In accordance with section 1052(c) of the Act, the Assistant Director of the Division of Enforcement may issue a civil investigative demand in any Bureau investigation directing the person named therein to produce documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau; to submit tangible things; to provide a written report or answers to questions; to appear before a designated representative at a designated time and place to testify about documentary material, tangible things, or other information; and to furnish any combination of such material, things, answers, or testimony.

(1) *Documentary material.*

(i) Civil investigative demands for the production of documentary material shall describe each class of material to be produced with such definiteness and certainty as to permit such material to be fairly identified, prescribe a return date or dates that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction, and identify the custodian to whom such material shall be made available. Documentary material for which a civil investigative demand has been issued shall be made available as prescribed in the civil investigative demand.

(ii) Production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(2) *Tangible things.*

(i) Civil investigative demands for tangible things shall describe each class of tangible things to be produced with such definiteness and certainty as to permit such things to be fairly identified, prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted, and identify the custodian to whom such things shall be submitted.

(ii) Submissions of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(3) *Written reports or answers to questions.*

(i) Civil investigative demands for written reports or answers to questions shall propound with definiteness and certainty the reports to be produced or the questions to be answered, prescribe a date or dates at which time written reports or answers to questions shall be submitted, and identify the custodian to whom such reports or answers shall be submitted.

(ii) Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath. Responses to a civil investigative demand for a written report or answers to questions shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all of the information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted to the custodian.

(4) *Oral testimony.*

(i) Civil investigative demands for the giving of oral testimony shall prescribe a date, time, and place at which oral testimony shall be commenced, and identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted. Oral testimony in response to a civil investigative demand shall be taken in accordance with the procedures for investigational hearings prescribed by §§ 1080.7 and 1080.9 of this part.

(ii) Where a civil investigative demand requires oral testimony from an entity, the civil investigative demand shall describe with reasonable particularity the matters for examination and the entity must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf. Unless

a single individual is designated by the entity, the entity must designate the matters on which each designee will testify. The individuals designated must testify about information known or reasonably available to the entity and their testimony shall be binding on the entity.

(b) *Manner and form of production of ESI.* When a civil investigative demand requires the production of ESI, it shall be produced in accordance with the instructions provided by the Bureau regarding the manner and form of production. Absent any instructions as to the form for producing ESI, ESI must be produced in the form in which it is ordinarily maintained or in a reasonably usable form.

(c) *Compliance.* The Assistant Director of the Division of Enforcement is authorized to negotiate and approve the terms of satisfactory compliance with civil investigative demands and, for good cause shown, may extend the time prescribed for compliance.

(d) *Petition for order modifying or setting aside demand—in general.* Any petition for an order modifying or setting aside a civil investigative demand shall be filed with the Executive Secretary of the Bureau with a copy to the Assistant Director of the Division of Enforcement within twenty (20) days after service of the civil investigative demand, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the civil investigative demand, including all appropriate arguments, affidavits, and other supporting documentation. The attorney who objects to a demand must sign any objections.

(1) *Statement.* Each petition shall be accompanied by a signed statement representing that counsel for the petitioner has conferred with counsel for the Bureau in a good-faith effort to resolve by agreement the issues raised by the petition and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference.

(2) *Extensions of time.* The Assistant Director of the Division of Enforcement is authorized to rule upon requests for extensions of time within which to file such petitions. Requests for extension of time are disfavored.

(3) *Disposition.* The Director has the authority to rule upon a petition for an order modifying or setting aside a civil investigative demand.

(e) *Stay of compliance period.* The timely filing of a petition for an order modifying or setting aside a civil investigative demand shall stay the time permitted for compliance with the portion challenged. If the petition is denied in whole or in part, the ruling will specify a new return date.

(f) *Public disclosure.* All such petitions and the responses thereto are part of the public records of the Bureau unless the Bureau determines otherwise for good cause shown.

§ 1080.7 Investigational hearings.

(a) Investigational hearings, as distinguished from hearings in adjudicative proceedings, may be conducted pursuant to a civil investigative demand for the giving of oral testimony in the course of any Bureau investigation, including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Bureau.

(b) Investigational hearings shall be conducted by any Bureau investigator for the purpose of hearing the testimony of witnesses and receiving documentary material, tangible things, or other information relating to any subject under investigation. Such hearings shall be under oath or affirmation and stenographically reported, and a transcript thereof shall be made a part of the record of the investigation. The Bureau investigator conducting the investigational hearing also may direct that the testimony be recorded by audio, audiovisual, or other means, in which case the recording shall be made a part of the record of the investigation as well.

(c) In investigational hearings, the Bureau investigators shall exclude from the hearing room all persons except the person being examined, his or her counsel, the officer before whom the testimony is to be taken, any investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any individual transcribing or recording such testimony. At the discretion of the Bureau investigator, and with the consent of the person being examined, persons other than those listed in this paragraph may be present in the hearing room. The Bureau investigator shall certify or direct the individual transcribing the testimony to certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness. A copy of the transcript shall be forwarded promptly by the Bureau investigator to the custodian designated in § 1080.13.

§ 1080.8 Withholding requested material.

(a) Any person withholding material responsive to a civil investigative demand or any other request for production of material shall assert a claim of privilege not later than the date set for the production of material. Such person shall, if so directed in the civil investigative demand or other request for production, submit, together with such claim, a schedule of the items withheld which states, as to each such item, the type, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged. The person who submits the schedule and the attorney stating the grounds for a claim that any item is privileged must sign it.

(b) A person withholding material solely for reasons described in this subsection shall comply with the requirements of this subsection in lieu of filing a petition for an order modifying or setting aside a civil investigative demand pursuant to § 1080.6(d).

(c) Disclosure of privileged or protected information or communications produced pursuant to a civil investigative demand shall be handled as follows:

(1) The disclosure of privileged or protected information or communications shall not operate as a waiver if:

(i) The disclosure was inadvertent;

(ii) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

(iii) The holder promptly took reasonable steps to rectify the error, including notifying a Bureau investigator of the claim and the basis for it.

(2) After being notified, the Bureau investigator must promptly return, sequester, or destroy the specified information and any copies; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if he or she disclosed it before being notified; and, if appropriate, may sequester such material until such time as a hearing officer or court rules on the merits of the claim of privilege or protection. The producing party must preserve the information until the claim is resolved.

(3) The disclosure of privileged or protected information or communications shall waive the

privilege or protection as to undisclosed information or communications only if:

(i) The waiver is intentional;

(ii) The disclosed and undisclosed information or communications concern the same subject matter; and

(iii) They ought in fairness to be considered together.

§ 1080.9 Rights of witnesses in investigations.

(a) Any person compelled to submit documentary material, tangible things, or written reports or answers to questions to the Bureau, or to testify in an investigational hearing, shall be entitled to retain a copy or, on payment of lawfully prescribed costs, request a copy of the materials, things, reports, or written answers submitted, or a transcript of his or her testimony. The Bureau, however, may for good cause deny such a request and limit the witness to inspection of the official transcript of the testimony. Upon completion of transcription of the testimony of the witness, the witness shall be offered an opportunity to read the transcript of his or her testimony. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness unless the witness cannot be found, is ill, waives in writing his or her right to signature, or refuses to sign. If the transcript is not signed by the witness within thirty (30) days of being afforded a reasonable opportunity to review it, the Bureau investigator, or the individual transcribing the testimony acting at the Bureau investigator's direction, shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(b) Any witness compelled to appear in person at an investigational hearing may be accompanied, represented, and advised by counsel as follows:

(1) Counsel for a witness may advise the witness, in confidence and upon the initiative of either counsel or the witness, with respect to any question asked of the witness for which an objection pursuant to paragraph (b) (2) of this section may properly be made. If the witness refuses to answer a question, counsel may briefly state on the record if he or she has advised the witness not to answer the question and the legal grounds for such refusal.

(2) Where it is claimed that a witness is privileged to refuse to answer a question or to produce other evidence, the witness or counsel for the witness shall object on the record to the question or requirement and may state briefly and precisely the ground therefor. The witness and his or her counsel shall not otherwise object to or refuse to answer any question, and they shall not otherwise interrupt the oral examination.

(3) Any objections made under the rules in this part will be treated as continuing objections and preserved throughout the further course of the hearing without the necessity for repeating them as to any similar line of inquiry. Cumulative objections are unnecessary. Repetition of the grounds for any objection will not be allowed.

(4) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (b)(1) and (2) of this section, interrupt the examination of the witness by making any objections or statements on the record. Petitions challenging the Bureau's authority to conduct the investigation or the sufficiency or legality of the civil investigative demand shall be addressed to the Bureau in advance of the hearing. Copies of such petitions may be filed as part of the record of the investigation with the Bureau investigator conducting the investigational hearing, but no arguments in support thereof will be allowed at the hearing.

(5) Following completion of the examination of a witness, counsel for the witness may, on the record, request that the Bureau investigator conducting the investigational hearing permit the witness to clarify any of his or her answers. The grant or denial of such request shall be within the sole discretion of the Bureau investigator conducting the hearing.

(6) The Bureau investigator conducting the hearing shall take all necessary action to regulate the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language. Such Bureau investigator shall, for reasons stated on the record, immediately report to the Bureau any instances where an attorney has allegedly refused to comply with his or her obligations under the rules in this part, or has allegedly engaged in disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of the hearing. The Bureau will thereupon take such further action, if any, as the circumstances warrant, including suspension or disbarment of the attorney from further practice before the Bureau or exclusion from further participation in the particular investigation.

§ 1080.10 Noncompliance with civil investigative demands.

(a) In cases of failure to comply in whole or in part with Bureau civil investigative demands, appropriate action may be initiated by the Bureau, including actions for enforcement.

(b) The Assistant Director of the Division of Enforcement and the General Counsel are authorized to:

(1) Institute, on behalf of the Bureau, an enforcement proceeding in the district court of the United States for any judicial district in which a person resides, is found, or transacts business, in connection with the failure or refusal of such person to comply with, or to obey, a civil investigative demand in whole or in part if the return date or any extension thereof has passed; and

(2) Seek civil contempt or other appropriate relief in cases where a court order enforcing a civil investigative demand has been violated.

§ 1080.11 Disposition.

(a) When the facts disclosed by an investigation indicate that an enforcement action is warranted, further proceedings may be instituted in federal or state court or pursuant to the Bureau's administrative adjudicatory process. Where appropriate, the Bureau also may refer investigations to appropriate federal, state, or foreign governmental agencies.

(b) When the facts disclosed by an investigation indicate that an enforcement action is not necessary or would not be in the public interest, the investigational file will be closed. The matter may be further investigated, at any time, if circumstances so warrant.

(c) The Assistant Director of the Division of Enforcement is authorized to close Bureau investigations.

§ 1080.12 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) The Assistant Director of the Division of Enforcement is hereby authorized to request approval from the Attorney General of the United States for the issuance of an order requiring a witness to testify or provide other information granting immunity under 18 U.S.C. 6004.

(b) The Bureau retains the right to review the exercise of any of the functions delegated under paragraph (a) of this section. Appeals to the Bureau from an order requiring a witness to testify or provide other information will be entertained by the Bureau only upon a showing that a substantial question is involved, the determination of which is

essential to serve the interests of justice. Such appeals shall be made on the record and shall be in the form of a brief not to exceed fifteen (15) pages in length and shall be filed within five (5) days after notice of the complained of action. The appeal shall not operate to suspend the hearing unless otherwise determined by the Bureau investigator conducting the hearing or ordered by the Bureau.

§ 1080.13 Custodians.

(a) The Bureau shall designate a custodian and one or more deputy custodians for material to be delivered pursuant to a civil investigative demand in an investigation. The custodian shall have the powers and duties prescribed by section 1052 of the Act, 12 U.S.C. 5562. Deputy custodians may perform all of the duties assigned to custodians.

(b) Material produced pursuant to a civil investigative demand, while in the custody of the custodian, shall be for the official use of the Bureau in accordance with the Act; but such material shall upon reasonable notice to the custodian be made available for examination by the person who produced such material, or his or her duly authorized representative, during regular office hours established for the Bureau.

§ 1080.14 Confidential treatment of demand material and non-public nature of investigations.

(a) Documentary materials and tangible things the Bureau receives pursuant to a civil investigative demand are subject to the requirements and procedures relating to the disclosure of records and information set forth in part 1070 of this chapter.

(b) Bureau investigations generally are non-public. Bureau investigators may disclose the existence of an investigation to potential witnesses or third parties to the extent necessary to advance the investigation.

Dated: July 22, 2011.

Sam Valverde,

Deputy Executive Secretary, Department of the Treasury.

[FR Doc. 2011–19035 Filed 7–25–11; 4:15 pm]

BILLING CODE 4810–25–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1082

[Docket No. CFPB–2011–0005]

RIN 3170–AA02

State Official Notification Rules

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Section 1042(c) of the Consumer Financial Protection Act of 2010 (''Act''), requires the Bureau of Consumer Financial Protection (''CFPB'' or ''Bureau'') to prescribe rules establishing procedures that govern the process, described in section 1042(b) of the Act, by which state officials notify the CFPB of actions or proceedings undertaken pursuant to the authority granted in section 1042(a) to enforce the Act or regulations prescribed thereunder. This interim final rule with a request for public comment sets forth those rules.

DATES: This interim final rule is effective on July 28, 2011. Written comments are invited and must be received on or before September 26, 2011.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0005,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1801 L Street, NW., Washington, DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036, (202) 435–7275.

SUPPLEMENTARY INFORMATION: The CFPB issues these State Official Notification Rules (''Rules''), pursuant to sections 1042(b) and (c) of the Consumer Financial Protection Act of 2010 (''Act''),[1] 12 U.S.C. 5552(b), (c). These Rules are promulgated as an interim final rule with a request for comment. The CFPB invites interested members of the public to submit written comments addressing the issues raised herein.

A. Background

These Rules will govern the process by which state officials notify the CFPB of actions or proceedings undertaken under section 1042(a) of the Act, 12 U.S.C. 5552(a), to enforce the Act, or regulations prescribed thereunder.

The Rules implement a procedure for the timing and content of the notice required to be given to the CFPB, set forth the responsibilities of CFPB employees and others who receive the notice, and specify the rights of the CFPB to participate in an action brought by a state official. In drafting these Rules, the CFPB endeavored to create a process that would both provide the CFPB and the relevant prudential regulators with timely notice of pending actions and account for the investigation and litigation needs of state law enforcement agencies. In keeping with this approach, the Rules provide for a default notice period of at least 10 days, with exceptions for emergencies and other extenuating circumstances, and require substantive notice that is both straightforward and comprehensive. The Rules further make clear that the CFPB can participate as appropriate in an action brought by state officials under the Act or a regulation prescribed thereunder, provide for confidential treatment of information disclosed to the CFPB and prudential regulators under these Rules, and establish that provision of notice shall not constitute a waiver of any applicable privilege. In addition, the Rules specify that the notice provisions do not create any procedural or substantive rights for parties in litigation against the United States or against a state which brings an action under the Act or a regulation prescribed thereunder.

B. Section Summary

The Rules are set forth in a single section, with several paragraphs, each of which is addressed below.

Section 1082.1(a) Notice Requirement

This paragraph sets out the timing and process for the provision of notice

[1] The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, Public Law 111–203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.* Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes these Rules on behalf of the CFPB.

by state officials under non-emergency circumstances. The paragraph requires state officials to provide notice no later than 10 days prior to initiating an action to enforce the Act or any regulation prescribed thereunder. The paragraph also identifies to whom and how the notice should be sent and sets out an exception to the timing of notice.

Section 1082.1(b) Emergency Actions

Section 1082.1(b) sets out the process for the provision of notice in emergency circumstances. The paragraph lays out the reasons for not providing notice in accordance with § 1082.1(a), and establishes a deadline to provide notice of no more than 48 hours after the initiation of an action. The paragraph also identifies to whom and how the notice should be sent, and also sets out an exception to the timing of notice.

Section 1082.1(c) Contents of Notice

In this paragraph, the CFPB specifies the information that must be included in the notice provided by state officials. This paragraph also details certain additional information that must be provided when notice is not given until after an action has been initiated.

Section 1082.1(d) Bureau Response

Section 1082.1(d) describes how the CFPB may intervene or otherwise participate in an action initiated by a state official.

Section 1082.1(e) Confidentiality and Privilege

Section 1082.1(e) provides that the CFPB and any prudential regulator who receives notice shall not disclose any non-public information about the notice, and also establishes certain exceptions to this requirement. In addition, the paragraph states that the provision of notice shall not constitute a waiver of any applicable privilege.

Section 1082.1(f) No Private Right of Action or Defense

This paragraph clarifies that the Rules do not create any right, benefit, or defense which is enforceable against the United States or state officials enforcing the Act or any regulation prescribed thereunder.

C. Procedural Requirements

1. Regulatory Requirements

The Rules relate solely to ''agency organization, procedure, or practice'' and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act (''APA''). *See* 5 U.S.C. 551 *et seq.* Even if these requirements did apply, the CFPB for good cause finds that in these circumstances providing advance notice and opportunity for comment would be impracticable and contrary to the public interest. *See* 5 U.S.C. 553(b). The Bureau also finds that there is good cause to issue this rule effective immediately. *See* 5 U.S.C. 553(d). Pursuant to the Act, state officials are permitted to begin bringing actions under the Act on July 21, 2011. In order to ensure that the CFPB, which is the primary agency responsible for administration of the Act and promulgating regulations under the Act, is aware of all legal developments related to the Act and situated to take appropriate action, it is necessary that the CFPB be informed of pending actions. The failure to promptly enact the Rules will leave the CFPB without the necessary information to evaluate actions taken pursuant to the Act and determine an appropriate response, which may impair the efficiency and consistency with which the Act is enforced. Thus, the CFPB has determined that this interim rule should be issued, effective immediately, without advance notice and opportunity for comment. Nevertheless, the CFPB invites public comment on the Rules.

Because no notice of proposed rulemaking is required, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2), do not apply.

The collection of information contained in this rule has been approved by the Office of Management and Budget (''OMB'') for review in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), under control number 1505–0237. The estimated time per response is 30 minutes. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

2. Section 1022(b)(2) Provisions

The CFPB has conducted an analysis of benefits, costs, and impacts [2] and consulted with the prudential regulators, the Department of Housing and Urban Development, the Securities and Exchange Commission, the Department of Justice, and the Federal Trade Commission, including with respect to whether the Rules are consistent with any relevant prudential, market, and systemic objectives administered by such agencies.[3]

The CFPB concludes that the Rules will benefit consumers and covered persons alike. The Rules do not impose any obligations on consumers or covered persons, nor do they have any direct relevance to consumers' access to consumer financial products and services. Rather, they provide for notice to the CFPB and prudential regulators when a state initiates an action under the Act, or a regulation prescribed thereunder. The notice provided to the CFPB may result in a CFPB decision to join an enforcement action, which may result in marginal additional costs to the relevant covered person. On the other hand, the Rules will help ensure more efficient and consistent implementation of the Act, which benefits both consumers and covered persons.

Further, the Rules have no unique impact on insured depository institutions or insured credit unions with less than $10 billion in assets described in section 1026(a) of the Act, and do not have a unique impact on rural consumers.

List of Subjects in 12 CFR Part 1082

Banks, Banking, Consumer protection, Credit, Credit unions, Federal Reserve System, Investigations, Law enforcement, National banks, Savings associations, State and local governments, Trade practices.

For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1082 to Chapter X in Title 12 of the Code of Federal Regulations to read as set forth below.

TITLE 12—BANKS AND BANKING

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

PART 1082—STATE OFFICIAL NOTIFICATION RULES

Authority: Pub. L. 111–203, Title X.

§ 1082.1 Procedures for notifying the Bureau of Consumer Financial Protection when a state official takes an action to enforce the Consumer Financial Protection Act of 2010.

(a) *Notice requirement.*

(1) Pursuant to 12 U.S.C. 5552(b) and except as discussed in paragraph (b) of

[2] Section 1022(b)(2)(A) addresses the consideration of the potential benefits and costs of regulation to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services; the impact of proposed rules on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[3] The President's July 11, 2011, Executive Order 13579 entitled ''Regulation and Independent Regulatory Agencies,'' asks the independent agencies to follow the cost-saving, burden-reducing principles in Executive Order 13563; harmonization and simplification of rules; flexible approaches that reduce costs; and scientific integrity. In the spirit of Executive Order 13563, the CFPB has consulted with the Office of Management and Budget regarding this interim final rule.

this section, every State attorney general and State regulator (collectively ''State Official'') shall provide the notice described in paragraph (c) of this section to the Division of Enforcement of the Bureau of Consumer Financial Protection (''Bureau''), the division of the Bureau responsible for enforcement of Federal consumer financial law pursuant to the Consumer Financial Protection Act of 2010, as amended, Public Law 111–203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.* (''Act''), and the Office of the Executive Secretary of the Bureau at least 10 days prior to initiating any action or proceeding in any court or other administrative or regulatory proceeding against any covered person to enforce any provision of the Act or any regulation prescribed thereunder, including but not limited to the filing of a complaint, motion for relief, or other document which initiates an action or proceeding.

(2) Notice shall be provided to the Division of Enforcement and the Office of the Executive Secretary, or their successor offices, via electronic mail to *Enforcement@cfpb.gov* and *ExecSec@cfpb.gov.* In the event of technical problems preventing the delivery of notice, the Division of Enforcement or its successor entity should be contacted.

(3) On the same date that notice is provided to the Division of Enforcement and the Office of the Executive Secretary pursuant to paragraph (a)(1) of this section, a copy of the notice shall be sent to the relevant prudential regulator, if any, or the designee thereof, by mail or electronic mail.

(4) Notice shall be deemed to have been provided as of the date of mailing the materials described in paragraph (c) of this section.

(5) The Division of Enforcement, or its successor entity, in consultation with a State Official, may provide, for good cause shown, an alternative deadline for the notice described in paragraph (a)(1) of this section.

(b) *Emergency actions.*

(1) Pursuant to 12 U.S.C. 5552(b), in the event that a State Official initiates or intends to initiate an action or proceeding and, in order to protect the public interest or prevent irreparable and imminent harm, is unable to provide timely notice as described in paragraph (a) of this section, the State Official shall provide the notice described in paragraph (c) of this section as soon as is practicable and not later than 48 hours after initiation of the action or proceeding.

(2) Notice shall be provided in accordance with the procedures set forth in paragraphs (a)(2) through (a)(4) of this section.

(3) The Division of Enforcement, or its successor entity, in consultation with a State Official, may provide, for good cause shown, an alternative deadline for the notice described in paragraph (b)(1) of this section.

(c) *Contents of notice.*

(1) Pursuant to 12 U.S.C. 5552(b), the notice required under paragraphs (a) and (b) of this section shall include a written description of the anticipated action or proceeding, including:

(i) The court or body in which the action or proceeding is to be initiated;

(ii) The identity of the parties to the action or proceeding;

(iii) The nature of the action or proceeding to be initiated;

(iv) The anticipated date of initiating the action or proceeding;

(v) The alleged facts underlying the action or proceeding;

(vi) A contact name, electronic mail address, and phone number of an individual involved with the matter in the office of the State Official with whom the Bureau may consult; and

(vii) A determination as to whether there may be a need to coordinate the prosecution of the action or proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) The notice required under paragraphs (a) and (b) of this section shall further include a complete and unredacted copy of any complaint, motion for relief, or similar document that is the subject of the notice, in its form as of the date the notice is provided. To the extent the complaint, motion for relief, or similar document contains the information described in paragraph (c)(1) of this section, provision of the complaint, motion for relief, or similar document shall be deemed sufficient notice of that information.

(3) In the event that notice is provided after the initiation of an action or proceeding, the written description shall also include the following, in addition to the information described in paragraph (c)(1) of this section:

(i) A brief description of any proceeding that occurred as a result of the initiation of the action or proceeding, including any orders issued by a court or other body;

(ii) Any case number, matter number, or designation assigned to the action or proceeding; and

(iii) Information on scheduled court or other administrative or regulatory proceedings.

(4) In the event that notice is provided after the initiation of an action or proceeding, in addition to the requirements set forth in paragraph (c)(3) of this section, the notice shall further include a complete, unredacted copy of any document filed by any party in relation to the action or proceeding and any orders issued by the court or other body.

(5) If the State Official, after providing the notice described in paragraphs (c)(1) and (c)(2) of this section, intends to file a complaint, motion for relief, or similar document that is materially different from the document included with the notice, the State Official shall provide a copy of that document prior to filing, in accordance with the method described in paragraph (a)(2) of this section.

(d) *Bureau response.* In any action or proceeding described in paragraphs (a) and (b) of this section, the Bureau may:

(1) Intervene in the action or proceeding as a party;

(2) Upon intervening,

(i) Remove the action to the appropriate United States district court, if the action or proceeding was not originally brought there; and

(ii) Be heard on all matters arising in the action;

(3) Appeal any order or judgment, to the same extent as any other party in the proceeding may; and

(4) Otherwise participate in the action as appropriate.

(e) *Confidentiality and privilege.*

(1) Unless and until such information becomes publically available, the substance and fact of the notice described in paragraph (c) of this section, including the complaint, motion for relief, or other document, shall not be disclosed by the Bureau or any relevant prudential regulator who received the notice except as permitted by paragraphs (e)(3) and (e)(4) of this section or as required by law.

(2) Provision of notice by a State Official and disclosure of notice pursuant to paragraphs (e)(3) and (e)(4) of this section shall not be deemed a waiver of any applicable privilege.

(3) Notwithstanding paragraph (e)(1) of this section, the Bureau and any relevant prudential regulator who received the notice described in paragraph (c) of this section may share the substance or fact of the notice with another entity pursuant to the consent of the State Official who provided the notice.

(4) Notwithstanding paragraphs (e)(1) and (e)(3) of this section, the Bureau may share the substance and fact of the notice described in paragraph (c) of this section with another state or federal government entity when necessary to protect the public interest, after

consultation with the State Official who provided the notice.

(f) *No private right of action or defense.* The requirements set forth in this section are not intended to, do not, and may not be relied upon to create any right, benefit, or defense, substantive or procedural, enforceable at law by a party against the United States or any State enforcing the provisions of the Act or any regulation prescribed thereunder.

Dated: July 22, 2011.

Sam Valverde,

Deputy Executive Secretary, Department of the Treasury.

[FR Doc. 2011–19034 Filed 7–25–11; 4:15 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0184; Airspace Docket No. 11–ANM–4]

Establishment of Class E Airspace; Nephi, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Nephi UT, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Nephi Municipal Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On May 17, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Nephi, UT (76 FR 28382). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Nephi Municipal Airport, Nephi, UT, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Nephi Municipal Airport, Nephi, UT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Nephi, UT [New]

Nephi Municipal Airport, Nephi, UT
(Lat. 39°44′12″ N., long. 111°52′12″ W.)

That airspace extending from 700 feet above the surface within a 9.7-mile radius of the Nephi Municipal Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 40°03′ 00″ N., long. 112°19′ 00″ W.; to lat. 39°56′ 00″ N., long. 111°23′ 00″ W.; to lat. 39°23′ 00″ N., long. 111°27′ 00″ W.; to lat. 39°29′ 00″ N., long. 112°21′ 00″ W.; to lat. 39°49′ 00″ N., long. 112°23′ 00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on July 19, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–18953 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0393; Airspace Docket No. 11–AWP–2]

Establishment of Class E Airspace; Kayenta, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kayenta, AZ. Controlled airspace is necessary to accommodate

aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Kayenta Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On May 25, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Kayenta, AZ (76 FR 30299). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Kayenta, Airport, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Kayenta Airport, Kayenta, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Kayenta, AZ [New]

Kayenta Airport, AZ
(Lat. 36°42′59″ N., long. 110°13′42″W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Kayenta Airport, and within 4 miles either side of the 066° bearing of the airport extending from the 7.7-mile radius to 14.5 miles northeast of Kayenta Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 36°54′00″ N., long. 110°03′00″ W.; to lat. 36°48′00″ N., long. 109°44′00″ W.; to lat. 36°26′00″ N., long. 109°14′00″ W.; to lat. 36°11′00″ N., long. 109°26′00″ W.; to lat. 36°03′00″ N., long. 110°12′00″ W.; to lat. 36°22′00″ N., long. 110°44′00″ W.; to lat. 36°42′00″ N., long. 110°31′00″ W.; to lat. 36°50′00″ N., long. 110°25′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on July 19, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–18944 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0359; Airspace Docket No. 11–AWP–1]

Modification of Class D and E Airspace; Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D and Class E airspace at Fort Huachuca, AZ, to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at Fort Huachuca, Sierra Vista Municipal Airport-Libby Army Airfield. This action, initiated by the biennial review of the Fort Huachuca airspace area, enhances the safety and management of aircraft operations at the airport. This action also updates the airport name.

DATES: Effective date, 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Rick Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

On May 20, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify controlled airspace at Fort Huachuca, AZ (76 FR 29179). Interested parties were invited to participate in this rulemaking effort by submitting written

comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6004 and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class D airspace, and Class E airspace designated as an extension to Class D surface area, and airspace extending upward from 700 feet above the surface, at Fort Huachuca, AZ. The FAA's biennial review of the airspace found additional controlled airspace necessary for the safety and management of aircraft departing and arriving under IFR operations at Fort Huachuca, Sierra Vista Municipal Airport-Libby Army Airfield. This action updates the geographic coordinates to coincide with the FAA's aeronautical database, and changes the airport name from Fort Huachuca, Libby AAF/Sierra Vista Municipal Airport, to Fort Huachuca, Sierra Vista Municipal Airport-Libby Army Airfield. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates additional controlled airspace at Fort Huachuca, Sierra Vista Municipal Airport-Libby Army Airfield, Fort Huachuca, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AWP AZ D Fort Huachuca, AZ [Modified]

Fort Huachuca, Sierra Vista Municipal Airport-Libby Army Airfield, AZ
(Lat. 31°35′19″ N., long. 110°20′40″ W.)

That airspace extending upward from the surface to and including 7,200 feet MSL within a 4.7-mile radius of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.

* * * * *

AWP AZ E4 Fort Huachuca, AZ [Modified]

Fort Huachuca, Sierra Vista Municipal Airport-Libby Army Airfield, AZ
(Lat. 31°35′19″ N., long. 110°20′40″ W.)

That airspace extending upward from the surface within 1.6 miles each side of the Airport 088° bearing, extending from the 4.7-mile radius of the airport to 7 miles east of the airport, and that airspace extending upward from the surface within 1 mile each side of the Airport 270° bearing, extending from the 4.7-mile radius of the airport to 5.5 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Fort Huachuca, AZ [Modified]

Fort Huachuca, Sierra Vista Municipal Airport-Libby Army Airfield, AZ
(Lat. 31°35′19″ N., long. 110°20′40″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the airport, and within 3.5 miles each side of the Airport 270° bearing extending 9 miles west of the airport, and that airspace 4 miles south and 8 miles north along the Airport 088° bearing extending 15.5 miles east of the airport, excluding that area within Restricted Area R–2312. That airspace extending upward from 1,200 feet above the surface within a 25-mile radius of Fort Huachuca-Sierra Vista Municipal Airport-Libby Army Airfield, excluding that area within Mexican airspace.

Issued in Seattle, Washington, on July 19, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–18947 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0362; Airspace Docket No. 11–ANM–7]

Modification of Class E Airspace; Glasgow, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Wokal Field/Glasgow International Airport, Glasgow, MT. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the airport name.

DATES: Effective date, 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual

revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On May 25, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E controlled airspace at Glasgow, MT (76 FR 30300). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, at Wokal Field/Glasgow International Airport, Glasgow, MT. Controlled airspace is necessary to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. This action also updates the airport name from Glasgow International Airport to Wokal Field/ Glasgow International Airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates additional controlled airspace at Wokal Field/Glasgow International Airport, Glasgow, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Glasgow, MT [Amended]

Wokal Field/Glasgow International Airport, MT
(Lat. 48°12′45″ N., long. 106°36′53″ W.)
Glasgow VOR/DME
(Lat. 48°12′55″ N., long. 106°37′32″ W.)
Milk River NDB
(Lat. 48°12′28″ N., long. 106°37′34″ W.)

Within a 4.2-mile radius of the Wokal Field/Glasgow International Airport, and within 2.7 miles each side of the Glasgow VOR/DME 327° radial extending from the 4.2-mile radius to 7.4 miles northwest of the VOR/DME, and within 2.7 miles each side of the Glasgow VOR/DME 127° radial extending from the 4.2-mile radius to 7.4 miles southeast of the VOR/DME, and within 2.7 miles each side of the Milk River NDB 106° bearing extending from the 4.2-mile radius to 7.4 miles east of the NDB.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Glasgow, MT [Modified]

Wokal Field/Glasgow International Airport, MT
(Lat. 48°12′45″ N., long. 106°36′53″ W.)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of Wokal Field/Glasgow International Airport; that airspace extending upward from 1,200 feet above the surface starting at lat. 48°40′00″ N., long. 106°00′02″ W.; to lat. 48°32′00″ N., long. 105°50′02″ W.; to lat. 48°03′00″ N., long. 105°50′02″ W.; to lat. 48°03′00″ N., long. 106°00′02″ W.; to lat. 47°49′00″ N., long. 106°22′32″ W.; to lat. 48°15′00″ N., long. 107°07′02″ W.; to lat. 48°40′00″ N., long. 107°07′02″ W., thence to point of beginning.

Issued in Seattle, Washington, on July 19, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–18946 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0403; Airspace Docket No. 11–AWP–3]

Modification of Class E Airspace; Alturas, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Alturas Municipal Airport, Alturas, CA. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Alturas Municipal Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support

Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On May 19, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Alturas, CA (76 FR 28915). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by creating additional Class E surface airspace extending upward from 700 feet above the surface, at Alturas, CA, to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Alturas Municipal Airport, Alturas, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Alturas, CA [Modified]

Alturas Municipal Airport, CA
(Lat. 41°28′59″ N., long. 120°33′55″ W.)

That airspace extending upward from 700 feet above the surface beginning at lat. 41°34′00″ N., long. 120°46′24″ W.; to lat. 41°36′50″ N., long. 120°30′19″ W.; to lat. 41°14′20″ N., long. 120°23′49″ W.; to lat. 41°11′35″ N., long. 120°39′34″ W., thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface beginning at lat. 41°31′00″ N., long. 121°02′00″ W.; to lat. 41°41′00″ N., long. 120°41′04″ W.; to lat. 41°41′00″ N., long. 120°20′00″ W.; to lat. 41°14′00″ N., long. 120°15′00″ W., to lat. 41°02′00″ N., long. 120°39′30″ W.; to lat. 41°05′00″ N., long. 121°03′00″ W.; to lat. 41°22′00″ N., long. 121°15′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on July 19, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–18949 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 244, 250, 253, 259 and 399

[Docket No. DOT–OST–2010–0140]

RIN No. 2105–AD92

Enhancing Airline Passenger Protections: Limited Delay of Effective Date for Certain Provisions

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final Rule, limited extension of effective date for certain provisions.

SUMMARY: The Department of Transportation is delaying the effective date for certain requirements adopted in an April 25, 2011 final rule on enhancing airline passenger protections. Specifically, the Department is delaying the effective date from August 23, 2011 to January 24, 2012, for requirements pertaining to baggage fees, post purchase price increases, flight status changes and holding a reservation without payment for twenty-four hours. The Department is also delaying the effective date from October 24, 2011 to January 24, 2012 for requirements pertaining to full fare advertising. The effective date remains August 23, 2011 for all the other requirements in the April 25, 2011 final rule, including the requirement not to permit an international flight to remain on the tarmac at a U.S. airport for more than four hours without allowing passengers to deplane, the requirement increasing the denied boarding compensation airlines must pay to passengers bumped from flights, and the requirement to disclose prominently all fees for optional aviation services on carriers' Web sites.

DATES: This rule is effective on July 28, 2011. The effective date of the final rule published at 76 FR 23110, April 25, 2011, continues to be August 23, 2011, except for the amendments relating to 14 CFR 399.84, 399.85(b) and (c), 399.87, 399.88, 399.89, 259.8, and 259.5(b)(4) which become effective on January 24, 2012.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *blane.workie@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On April 25, 2011, the Department of Transportation published a final rule in the **Federal Register** (76 FR 23110), titled ''Enhancing Airline Passenger Protections,'' containing many new requirements to improve the air travel environment for consumers, expanding upon the improved passenger rights included in a rule published on December 30, 2009. More specifically, the April 25, 2011, rule (1) Increases the number of carriers that are required to adopt tarmac delay contingency plans and includes additional airports at which they must adhere to the plan's terms; (2) increases the number of carriers that are required to report tarmac delay information to the Department; (3) expands the group of carriers that are required to adopt, follow, and audit customer service plans and establishes minimum standards for the subjects all carriers must cover in such plans; (4) adds carriers to those required to include their contingency plans and customer service plans on their Web sites; (5) increases the number of carriers that must respond to consumer complaints; (6) enhances protections afforded passengers in oversales situations, including increasing the denied boarding compensation airlines must pay to passengers bumped from flights; (7) strengthens, clarifies and codifies the Department's enforcement policies concerning air transportation price advertising practices; (8) requires carriers to notify consumers of optional fees related to air transportation and of increases in baggage fees; (9) prohibits post-purchase price increases; (10) requires carriers to provide passengers timely notice of flight status changes such as delays and cancellations; and (11) prohibits carriers from imposing unfair contract of carriage choice-of-forum provisions. As published, the effective date of the rule is August 23, 2011, except for the full fare advertising amendments which become effective on October 24, 2011.

We received requests from U.S. carrier associations, foreign carrier associations and a travel agent association to delay the effective date of certain provisions in this rule. The Air Transport Association of America (ATA), the Regional Airline Association (RAA) and the Air Carrier Association of America (ACAA) requested that the Department of Transportation delay by 180 days the compliance time for the full fare advertising amendments in 14 CFR 399.84, the denied boarding compensation amendments in 14 CFR part 250, the requirement to disclose baggage fees in e-ticket confirmations in 14 CFR 399.85(c), and the requirement in 14 CFR 399.87 for the same baggage allowances and fees to apply to a passenger throughout an itinerary. These U.S. carrier associations state that they have limited their request to the four provisions that require deployment of additional IT resources, development of new protocols and the training of many employees. The National Air Carrier Association (NACA) joined the request to delay the effective date and stated that it also believes compliance cannot be achieved within the time contemplated by the regulation without undue cost to the airlines and confusion to the traveling public.

According to the U.S. carrier associations, it will take more than the time allotted by the final rule to comply with the amendments to the denied boarding compensation rule because of the need to make additional systems and programming changes and the need to ensure the appropriate offices and employees are aware of and trained on the changes to this rule. The carrier associations also ask for additional time to comply with the requirement to disclose baggage fees in e-ticket confirmations if detailed baggage fee information individualized to a particular passenger is required and if the notice of applicable baggage information must be in text form and a hyperlink is not allowed. In addition, the U.S. carrier associations assert that it is not possible to comply with the requirement to apply the same baggage allowances and fees to a passenger throughout an itinerary without an additional 180 days as no central repository for carrier baggage policies and fees currently exists. They note that carriers are working to develop an industry solution to comply with this requirement but more time is needed.

The U.S. carrier associations are particularly concerned about the full fare advertising requirements, which they contend they cannot meet by the published effective date of October 24, 2011. They state that this aspect of the final rule requires the greatest IT investment and that carriers are preparing to reprogram and reconfigure their online search engines to incorporate the new advertising requirements but that carriers would need at least an additional 180 days to create, modify and test these changes. The associations ask that the Department delay the effective date for not only online advertising but also print advertising so that consumers receive consistent advertising of fares through all advertising channels.

The foreign air carrier associations have indicated their strong support of the request by the U.S. carrier associations and have asked that the 180-day extension be expanded to cover all the requirements being imposed for the first time on non-U.S. airlines. These associations are the International Air Transport Association (IAT), Association of Asia Pacific Airlines (AAPA), Association of European Airlines (AEA), and Latin and Caribbean Air Transport Association (ALTA). They have stated that they believe investments and changes are needed to meet the new DOT requirements. They also state that the ability of the non-U.S. airlines to meet these requirements in a timely fashion is impacted by constraints on existing operations, staffing, IT support, local laws and regulations, labor practices and resources.

In addition to the airlines, the American Society of Travel Agents (ASTA) has requested an extension of the effective date of the final rule. ASTA requests that the Department delay the effective date of the requirement in section 399.85(b) to disclose baggage fee information on Web sites when a fare quotation for a specific itinerary is selected by a consumer and the requirement in section 399.85(c) to disclose baggage fee information on all e-ticket confirmations. ASTA's request differs from the requests of the U.S. and foreign air carrier associations in that ASTA is not requesting a specific amount of additional time to implement the requirements. Rather, ASTA is asking that the Department defer the effective date of these two requirements until the Department concludes its upcoming rulemaking on disclosure of fees for ancillary services. ASTA, like the U.S. carriers, notes its uncertainty as to whether the requirement to provide specific information to passengers about baggage allowances and baggage fees means providing individualized information about those matters. ASTA also asserts that the two methods the rule describes for agents to provide baggage information to consumers are not feasible. It calls the first method (providing a link to an airline Web site) ''an act of commercial suicide'' and believes the second method (referring consumers to its own site if it displays airlines' baggage fees) impractical because of the labor cost to achieve it initially and to monitor airline Web sites constantly for updates.

In addition to the requests to delay the effective date of the rule, we received a request from Allegiant Air and Spirit Airlines as well as Southwest Airlines to postpone or stay the effective

date pending judicial review of various provisions in this regulation by the United States Court of Appeals for the District of Columbia Circuit. In June, Allegiant and Spirit filed petitions for review before that court asserting that the rule unlawfully: (1) Ends the practice of permitting sellers of air transportation to exclude government taxes and fees from the advertised price; (2) prohibits the sale of nonrefundable tickets by requiring airlines to hold reservations at the quoted fare without payment or cancel without penalty for at least twenty-four hours after the reservation is made if the reservation is made one week or more prior to a flight's departure; (3) prohibits post-purchase price increases, including increases in the price of ancillary products and services, after the initial ticket sale; (4) requires baggage fees to be disclosed on e-ticket confirmations; and (5) mandates notification of flight schedule changes. Spirit's and Allegiant's request to the Department to stay the rule pending judicial review covers all the specific provisions that are part of the litigation. Southwest is requesting that the Department stay the effective date of the new full fare advertising rule.

A few other organizations have also provided the Department their views on the requests to stay the rule and the requests to delay the effective date of the rule. The Consumer Travel Alliance (CTA) has expressed its opposition to any delay in implementation of the rulemaking. CTA appears particularly concerned about requests to delay the requirement to disclose baggage fee information to consumers. It notes that airlines have the means through the Airline Tariff Publishing Company (ATPCO) to disclose all baggage fee information so that both airlines and ticket agents can easily disclose baggage fee information to consumers. The Airports Council International–North America (ACI–NA) has also noted its concern with the recent filings requesting extensions to the effective date of the rule but states that it recognizes that the Department may determine that the implementation date for some portions of the regulations may need to be delayed. ACI–NA does urge the Department to not delay the implementation date for U.S. carriers to extend their tarmac delay plans to small and non-hub airports.

Similarly, an individual commenter who works in the travel industry stated that it may be appropriate to delay the effective date of certain provisions in the final rule such as the full fare advertising requirements but expressed his strong opposition to the blanket request for an extension of the effective date of all the consumer protection requirements in the rule. This individual identified the provisions pertaining to denied boarding compensation and baggage fees as ones that should not be delayed based on his belief that airlines can easily comply with these provisions and their importance to consumers.

After carefully considering all the requests and comments provided, the Department has decided to delay the effective date of the requirements pertaining to full fare advertising (section 399.84) by an additional three months to January 24, 2012, and delay the effective date of certain specific requirements pertaining to baggage fees (sections 399.85(b) and (c) and 399.87), post-purchase price increases (sections 399.88 and 399.89), flight status notifications (section 259.8) and holding a reservation without payment (section 259.5(b)(4)) to the same date. We are denying the request of U.S. carrier associations to delay the effective date of denied boarding compensation amendments and the request of the foreign carrier associations to delay the effective date of the entire rule.

The Department took a number of factors into consideration in deciding to delay certain provisions of the rule until January 24, 2011, including the fact that there are limited objections to the requests for an extension of time. We are persuaded that additional time is needed to comply with the full fare advertising amendments as they relate to online advertising as they may require the deployment of IT resources, and to allow maximum flexibility to make alterations to Web sites with minimal disruption. We also believe that we should apply the same effective date to print advertising so that consumers do not see different advertising displays in different media which could result in consumer confusion.

With regard to baggage fees, there appears to be some confusion regarding what the Department meant by the requirement in section 399.85 (b) that ''specific baggage fee information'' must be disclosed on Web sites when a fare quotation for a specific itinerary is selected by a consumer and by the requirement in section 399.85(c) that carriers must provide information on all e-ticket confirmations regarding the free baggage allowance and fee for a carry-on bag and the first and second checked bag ''as specific charges taking into account any factors (*e.g.,* frequent flyer status, early purchase, and so forth) that affect those charges.'' We want to clarify that the rule does not require passenger-specific information concerning baggage allowances and baggage fees on e-ticket confirmations or on Web sites providing fare quotations. We used the term ''specific charges'' to ensure that the regulated entities understood that a range of fees would not be acceptable under the rule. In other words, carriers must provide specific information to consumers about all the factors that cause the fee for a carry-on bag or the first and second checked bag to vary so passengers can determine for themselves the fees that would apply to them. For example, it would not be sufficient for a carrier to state that the fee for the first checked bag ranges from $0 to $50. However, it would be acceptable if the carrier states that the fee for the first checked bag would be $0 for its elite frequent flyer passengers or those who purchased their ticket with a specified credit card, $25 for passengers who pay for baggage online, and $50 for those passengers who pay at the airport. Of course, carriers are free to provide individualized baggage charge information to passengers but this is not required by the rule.

Although individualized baggage fee information is not required by the final rule, the Department still sees merit in delaying the effective date of the requirements in § 399.85(b) and (c) as the travel agencies need time to determine the method they will use to ensure that specific baggage fee information is available to their consumers. We are also persuaded that additional time is needed by the carriers as they are not permitted under the rule to provide the required notice of applicable baggage charges through a hyperlink. However, we don't believe that it will be in the best interest of consumers to delay the effective date of these provisions until the Department concludes its rulemaking on disclosure of ancillary fees as requested by ASTA.

With respect to the U.S. carrier associations request to delay the effective date of the provision requiring consistent baggage rules across an entire itinerary, the associations have adequately demonstrated the difficulties in applying the same baggage allowances and fees across an itinerary when they cannot readily access each other's fee schedules. We are encouraged that they are working towards an industry solution and have provided them additional time so that an industry standard can be developed. We have also decided to delay the effective date of the provisions pertaining to post purchase price increases, flight status changes and holding a reservation without payment for twenty-four hours to provide

additional time to overcome any technical difficulties in implementing the rules.

In delaying the effective date for these requirements, the Department is balancing the benefit of having these protections in place for consumers as soon as practical with the capability of airlines to comply with the additional requirements being imposed upon them in a reasonable timeframe. We believe the January 24, 2012, date will provide the airlines adequate time to comply with the requirements.

Regulatory Analyses and Notices

A. Administrative Procedure Act

Section 553(b) of the Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency ''for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Because August 23, 2011 (the effective date for the April 2011 final rule) is fast approaching, the Department finds good cause that this action delaying the effective date should take effect immediately. Today's final rule makes no substantive changes to the rule, but simply delays the effective date of certain provisions until January 24, 2012.

B. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action is not a significant regulatory action under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. Accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

C. Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DOT certifies that this action will not have a significant impact on a substantial number of small entities. This action imposes no duties or obligations on small entities.

D. Executive Order 13132 (Federalism)

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

E. Executive Order 13084

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because the provisions for which we are delaying the effective date would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DOT has determined that there are no new information collection requirements associated with this action. The action merely postpones the effective date of a regulatory provision whose paperwork impact has already been analyzed by the Department, and consequently no additional OMB approval is necessary.

G. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Issued this 20th day of July 2011, in Washington, DC.

Susan Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2011–18903 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–9X–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2010–0025]

RIN 0960–AH21

Revisions to Direct Fee Payment Rules

AGENCY: Social Security Administration.

ACTION: Interim final rules with request for comments.

SUMMARY: We are revising our rules to implement amendments to the Social Security Act (Act) made by the Social Security Disability Applicants' Access to Professional Representation Act of 2010 (PRA). We are making permanent the direct fee payment rules for eligible non-attorney representatives under titles II and XVI of the Act and for attorney representatives under title XVI of the Act. We also are revising some of our eligibility policies for non-attorney representatives under titles II and XVI of the Act.

DATES: These rules are effective August 29, 2011.

Comment Date: To ensure we consider your comments, we must receive them by September 26, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2010–0025 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2010–0025. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Joann S. Anderson, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–6716. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–

1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

Claimants may use representatives to help them with their claims for benefits before us. Prior to March 2, 2004, the Act authorized us to withhold 25% of a claimant's past-due benefits under title II of the Act when the claimant hired an attorney representative and to pay the attorney's fees directly from the withheld amounts.[1] The Social Security Protection Act of 2004 (SSPA) amended section 1631(d)(2) of the Act and authorized us for five years to withhold 25% of a claimant's past-due benefits in claims filed under title XVI of the Act and pay any approved fee directly to the claimant's attorney.[2] The SSPA also authorized a five-year demonstration project during which we could similarly withhold 25% of the past-due benefits for claims filed under titles II and XVI of the Act and pay fees directly to non-attorney representatives who met specific requirements.[3] Both SSPA provisions were set to expire on February 28, 2010.[4]

The SSPA specified five requirements that a non-attorney representative had to meet to be eligible for direct fee payment. The representative had to:

(1) Have a bachelor's degree from an accredited institution of higher education or have been determined by us to have equivalent qualifications derived from training and work experience;

(2) Pass an examination that we wrote and administered, which tested knowledge of the relevant provisions of the Act and the most recent developments in Social Security Administration (SSA) and court decisions affecting titles II and XVI of the Act;

(3) Secure professional liability insurance, or equivalent insurance, which we determined to be adequate to protect claimants in the event of malpractice by the representative;

(4) Undergo a criminal background check to ensure the representative's fitness to practice before us; and

(5) Demonstrate ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which were designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of the Act. The SSPA required that the continuing education courses, and the instructors providing the education courses, meet our prescribed standards.[5]

The SSPA also gave us the discretion to add requirements and authorized us to assess reasonable fees to cover our cost of administering the demonstration project requirements.[6]

We published several notices in the **Federal Register** that solicited public input and described the policies we would use to implement these requirements and the fee assessment.[7] Using our discretion, we also added a sixth requirement—representational experience. We describe in more detail below how we implemented these requirements under the SSPA.

We also published interim final rules and final rules to include information in our regulations about the SSPA, such as the demonstration project, the withholding and direct fee payment provisions for non-attorney representatives, direct fee payment to attorney representatives under title XVI of the Act, and the SSPA's five-year sunset date of February 28, 2010.[8]

The PRA

On February 27, 2010, Congress enacted the PRA and revised the Act in two main ways.[9] First, it permanently extended our authority to withhold 25% of a claimant's past-due benefits and directly pay any authorized fees to attorney representatives for claims filed under title XVI of the Act.[10] To accommodate this change, we are revising our rules in final sections 416.1530 to remove the sunset date and making other conforming changes.

Second, the PRA permanently extended our authority to withhold 25% of past-due benefits and directly pay any authorized fees to eligible non-attorney representatives under titles II and XVI of the Act.[11] The PRA includes nearly identical language to the SSPA about the five mandatory requirements for direct fee payment, our discretion to add requirements, and our ability to assess representatives a reasonable fee to cover the cost of administration. Based upon our experience with the demonstration project, in these interim final rules we are modifying how we implement these provisions to help non-attorney representatives more easily understand and comply with our requirements and process.

The following information explains how we have been implementing the SSPA's requirements, how we will implement the PRA, and the revisions we are making to our rules.

Application Process

To implement the requirements of the SSPA, we required non-attorneys who wanted to receive direct fee payment to apply with us. We held one application period per year through 2009, except for the first year when we held two application periods. We required any non-attorney representative who wanted to be eligible to receive direct fee payment to complete an application, submit the required documentation, and pay the application fee. We required applicants to postmark their applications by the last day of the application period. We also gave applicants who timely paid the application fee 6 weeks to cure defects in an incomplete application. After we verified that all other requirements had been met, we permitted the applicant to take our written examination.

We allowed an applicant who did not complete the application in a timely manner, pay the application fee, or pass the examination, to reapply during any subsequent application period. However, we required the applicant to complete an application, pay an application fee, and meet the requirements each time he or she reapplied to take the examination.

We have decided to change two of our procedures in order to streamline the application process. As explained above, we previously verified that each applicant met the education or equivalent qualifications, insurance, and criminal background check requirements before we permitted him or her to take the examination. Under these rules, an applicant must indicate that he or she meets the education or equivalent qualification requirement and pass the criminal background check before we permit the applicant to take the examination. However, we will not request documentation or verify that an applicant meets the education or equivalent qualifications and insurance requirements until after he or she takes and passes the examination. This change will help us save resources because we will not need to verify information about applicants whom we

[1] 42 U.S.C. 406.

[2] Public Law 108–203, section 302. The authority began February 28, 2005.

[3] Section 303 of the SSPA.

[4] Sections 302(c)(2) and 303(e)(2) of the SSPA.

[5] Section 303(b) of the SSPA.

[6] Sections 303(b) and (c) of the SSPA.

[7] 69 FR 50431 (Aug. 16, 2004), 69 FR 77307 (Dec. 27, 2004), 70 FR 2447 (Jan. 13, 2005), 70 FR 14490 (Mar. 22, 2005); 70 FR 41250 (July 18, 2005), and 72 FR 46121 (Aug. 16, 2007).

[8] See 72 FR 16720 (Apr. 5, 2007), 72 FR 44765 (Aug. 9, 2007), and 20 CFR 404.1717(a) and (c), 416.1517(a) and (c), and 416.1530(e).

[9] Public Law 111–142.

[10] Section 2 of the PRA.

[11] Section 3 of the PRA.

determine, based on information in their applications, to be ineligible to take the examination, or who do not pass the examination.

Second, instead of the 6-week time period we currently give an applicant to cure defects in his or her application, we will make this process consistent with our protest procedures and give an applicant 10 calendar days from the date we notify him or her that there is a defect in the application to correct the problem. We will permit only an applicant who both timely submits the application and timely pays the application fee to cure defects in his or her application. We are making this change because we will require an applicant to provide less documentation before he or she passes the examination under these rules.

We are adding these requirements in final sections 404.1717(a)(1), (b), and (f) and 416.1517(a)(1), (b), and (f).

Application Fee

Both the SSPA and the PRA allow us to assess reasonable fees to cover the cost of administering the requirements for non-attorney representative eligibility for direct fee payment, such as the cost of administering the written examination and conducting criminal background checks.[12] After Congress enacted the SSPA, we published two notices in the **Federal Register** that explained how we administered the application fee process.[13]

We set the fee at $1,000 per applicant, specified the means of payment, and required applicants to pay the fee when they submitted their applications. We would refund or apply the fee to a subsequent application period in two circumstances:

- If the contractor who administered the demonstration project for us was at fault for failing to administer an examination and an applicant did not take the rescheduled examination; or
- If circumstances beyond the applicant's control, such as a death in the applicant's immediate family, a documented illness of the applicant, or a transportation problem that could not have been reasonably anticipated and planned for, prevented an applicant from taking a scheduled examination.

We assessed whether the applicant's circumstances warranted a refund, considering basic principles of fairness and sound management.

We would not refund or credit a fee to a subsequent application if an applicant:

- Took and failed the examination; or
- Failed to arrive on time for an examination because of circumstances within the applicant's control, such as a traffic problem or a child-care problem of a type that could have been anticipated and planned for.

Our action about whether to provide a refund or apply a fee to a future application period was final and not subject to further review.

Most of these requirements have worked well, and we are adding them in final sections 404.1717(a)(2) and (c) and 416.1517(a)(2) and (c).

However, we are making three changes to our current procedures. First, we will refund the application fee instead of applying the fee to a subsequent application if: (1) We fail to administer a scheduled examination and an applicant is unable to take the rescheduled examination, or (2) we agree that circumstances beyond the applicant's control that could not have been reasonably anticipated and planned for prevented the applicant from taking a scheduled examination. This change will give applicants use of the money until they apply again, and it will help us administer the direct fee payment program more efficiently. Second, we are no longer going to use the ''principles of fairness and sound management'' test to determine when to refund an application fee. Instead, we will consider an applicant's individual circumstances. Examples of circumstances that we may consider to be beyond an applicant's control that cannot reasonably be anticipated or planned for include a death in the applicant's immediate family or the documented illness of the applicant or the applicant's immediate family member. However, we will not refund the application fee if: (1) An applicant took and failed the examination, or (2) an applicant failed to arrive on time for the examination because of circumstances within the applicant's control that could have been anticipated and planned for. Finally, these interim final rules do not specify the application fee amount. If we decide to change the current application fee of $1,000, we will notify the public through appropriate methods and may announce the changes on our Web site: *http://www.socialsecurity.gov/representation*. We will notify applicants of any change in the application fee amount in the application package.

Education or Equivalent Qualifications

For a non-attorney representative to receive direct fee payment, the SSPA and the PRA both require either that a representative have ''a bachelor's degree from an accredited institution of higher education,'' or that we determine that the representative has ''equivalent qualifications derived from training and work experience.'' [14] After the SSPA, we published a notice in the **Federal Register** that explained how we would administer this requirement.[15] We stated how we would determine that an applicant who did not have a qualifying bachelor's degree could meet the equivalent qualifications requirement by using a formula that balanced the applicant's years of education and his or her relevant professional experience:

- If the applicant did not have a bachelor's degree, but had three years or more of undergraduate study at an accredited institution of higher learning, the applicant must have had at least one year of relevant professional experience, at least six months of which must have involved claims for benefits under title II or XVI of the Act;
- If the applicant had at least two, but less than three years of undergraduate study at an accredited institution of higher learning, the applicant must have had at least two years of relevant professional experience, at least one year of which must have involved claims for benefits under title II or XVI of the Act;
- If the applicant had at least one, but less than two years of undergraduate study at an accredited institution of higher learning, the applicant must have had at least three years of relevant professional experience, at least two years of which must have involved claims for benefits under title II or XVI of the Act; or
- If the applicant had less than one year of undergraduate study at an accredited institution of higher learning, or no undergraduate education, the applicant must have received a high school diploma or a General Educational Development (GED) certificate and have had at least four years of relevant professional experience, at least two years of which must have involved claims for benefits under title II or XVI of the Act.[16]

We also considered relevant professional experience to be work through which the applicant demonstrated familiarity with medical reports and the ability to describe and assess mental or physical limitations. We stated that applicants could gain

[12] Section 303(c) of the SSPA and section 3(a) of the PRA.

[13] 70 FR 2448 and 70 FR at 41252.

[14] Section 303(b)(1) of the SSPA and section 3(a) of the PRA.

[15] 70 FR at 2448–49.

[16] 70 R at 2448–2449. Applicants who possessed a juris doctor degree could only participate in the demonstration project if they did not qualify to receive direct fee payment as attorneys under 42 U.S.C. 406 and 1383.

this kind of experience in fields such as teaching, counseling or guidance, social work, personnel management, public employment service, nursing, or health care professions. We also considered relevant professional experience to include work involving claims for benefits under title II or XVI of the Act. We asked applicants to show that they met this requirement before they took the examination.

We have found it cumbersome to administer this formula for balancing years of education and relevant professional experience. To help simplify the application process, we have decided not to use this formula. Instead, we will now require applicants to demonstrate that they have either:

- A bachelor's degree from an accredited institution of higher learning, or
- At least four years of relevant professional experience and either a high school diploma or GED certificate.

We will continue to consider relevant professional experience to be work through which the applicant demonstrates familiarity with medical reports and the ability to describe and assess mental or physical limitations. As in the past, an applicant may gain this kind of experience in fields such as teaching, counseling or guidance, social work, personnel management, public employment service, nursing, or health care professions. We will also continue to consider relevant professional experience to include work involving claims for benefits under title II or XVI of the Act.

We will ask for proof of an applicant's education, appropriate training, or work experience after the applicant passes the examination. The kinds of proof we may accept include, but are not limited to, copies of an official education transcript, copies of an Internal Revenue Service Form W–2 (Wage and Tax Statement), or letters from an applicant's employer verifying the length and type of employment.

We are adding these requirements in final sections 404.1717(a)(3) and 416.1517(a)(3).

Written Examination

For a non-attorney representative to receive direct fee payment, the SSPA and the PRA both require the representative to pass an examination that we write and administer that ''tests [a representative's] knowledge of the relevant provisions of [the] Act and the most recent developments in [SSA] and court decisions affecting [titles II and XVI of the Act].'' [17]

After the SSPA, we published a notice in the **Federal Register** that explained how we would administer this requirement.[18] We said that we would administer written examinations that included 40–50 multiple-choice questions in English only. We offered two examinations during the first year of the demonstration project. From 2006 through 2009, we offered the test once per year on a weekday. The test-takers had open-book access to reference materials that we supplied, such as the most recent edition of the Compilation of the Social Security Laws, Volume 1, and our regulations in 20 CFR chapter III. We based the examinations on situations arising from the subject areas in the reference materials and considered a score of 70 to be passing. We allowed an applicant who failed the examination to reapply to take the examination during a subsequent application period and provided an applicant with the opportunity to protest a failing score.

We are adding the requirement that a non-attorney representative take and pass our written examination in final sections 404.1717(a)(5) and 416.1517(a)(5). However, we will specify the details of how we administer the examination, the contents of the examination, and our scoring procedures through other means of communication, such as on our Web site.

While we do not anticipate changing how we administer the examination requirement at this time, we may change this process in the future without publishing a notice in the **Federal Register**. We will notify the public and applicants of any relevant changes through alternate methods, such as through our Web site: *http://www.socialsecurity.gov/representation*.

Liability Insurance

For a non-attorney representative to receive direct fee payment, both the SSPA and the PRA require that the representative ''secure[] professional liability insurance, or equivalent insurance, which [we determine] to be adequate to protect claimants in the event of malpractice by the representative.'' [19]

In the **Federal Register** notices that we published after Congress passed the SSPA, we explained how we would administer this requirement.[20] At first, we required applicants to have a minimum total annual amount of coverage of $1 million (for all incidents in that year), plus coverage of $250,000 per incident for coverage of errors and omissions committed by the non-attorney representative. We later reduced the per-incident minimum coverage to $100,000 per incident and decided to consider business liability insurance as professional liability insurance. For professional liability insurance, we also changed the minimum annual aggregate amount to $500,000. For business liability insurance, we set the minimum annual aggregate amount in accordance with the following schedule:

Number of covered employees	*Minimum aggregate amount*
1 to 10	$500,000.
11 to 25	$1 million.
26 to 50	$2 million.
51 to 100	$3 million.
101 to 200	$4 million.
201 or more	$5 million.

We believed that these insurance coverage amounts would adequately protect claimants in the event of malpractice by non-attorney representatives, while increasing the ability of non-attorney representatives who wished to participate in the demonstration project to obtain insurance. We also stated that these amounts were consistent with insurance agency practices and standards, which emphasized the per-incident coverage and relied on graduated schedules in increasing minimum aggregate amounts.

Under these procedures, a non-attorney representative must use a firm licensed to provide insurance in the State in which the non-attorney representative conducts business to underwrite the insurance policy. We also required the policy to provide coverage for liability insurance claims made in those States in which the non-attorney representative represents claimants before us. We required an applicant to submit proof that he or she had the required insurance coverage before the application period closed to be able to take the examination. We also required non-attorney representatives who established eligibility to participate in the demonstration project to maintain their insurance coverage to continue to be eligible to receive direct fee payment.

We have found some of the current requirements to be ineffective because some representatives have canceled

[17] Section 303(b)(2) of the SSPA and section 3(a) of the PRA.

[18] 70 FR at 2450.

[19] Section 303(b)(3) of the SPA and section 3 of the PRA.

[20] 70 FR at 2449 and 70 FR at 41251.

their insurance coverage without informing us. To help ensure that non-attorney representatives maintain adequate liability insurance, we are revising how we will apply this requirement.

We will now require non-attorney representatives who want to receive direct fee payment to provide their initial proof of insurance coverage after passing the examination. We will, at various times, request that representatives provide proof that they have maintained professional or business liability insurance coverage in amounts we prescribe. If we find that a representative has not maintained continuous coverage since our last verification, the representative will be ineligible for direct fee payment for at least 6 full calendar months. We provide more details about this in the *Ineligibility and Protest Procedures* section, below.

We are revising our rules to require that each eligible non-attorney representative ''[p]rovides proof of and maintains continuous liability insurance coverage in an amount we prescribe'' in final sections 404.1717(a)(6) and 416.1517(a)(6). We will specify the amount of required insurance coverage in our subregulatory instructions and periodically adjust the required coverage amounts to protect claimants adequately. We are continuing to require representatives to have professional or business liability insurance coverage in the same amounts listed earlier. However, we may change these amounts each year. If we change them in the future, we will announce the changes by the end of any examination application period for that year. We will notify the public of any relevant changes through alternate methods, such as through our Web site: *http://www.socialsecurity.gov/representation.*

Criminal Background Check

For a non-attorney representative to receive direct fee payment, the SSPA and the PRA both require that a ''representative has undergone a criminal background check to ensure the representative's fitness to practice before [us].'' [21]

After the SSPA, we published a notice in the **Federal Register** that explained how we would administer this requirement.[22] Under those procedures, we would reject any applicant who:

- Had been suspended or disqualified from practice before us;
- Had a judgment or lien assessed against him or her by a civil court for malpractice or fraud;
- Had a felony conviction;
- Engaged in substantial misrepresentation in submitting his or her application or supporting materials for the application;
- Failed to pass our administrative records check (check of SSN, *etc.*); or
- Failed to provide documentation as requested by our contractor to perform the criminal background investigation.

We will continue to follow most of these requirements. However, we are not continuing with the disqualifying standard: ''Engages in substantial misrepresentation in submitting his or her application or supporting materials for the application.'' Instead, we will require an applicant to attest under penalty of perjury that he or she ''[h]as not misrepresented information provided on his or her application or supporting materials for the application.''

We are making this change to clarify that we will not accept even minor misrepresentations by applicants. We also are not stating that a contractor will conduct the criminal background investigation because we may not use a contractor in the future. We are clarifying that a representative must continue to meet the criteria in the criminal background check at all times to remain eligible to receive direct fee payment. All other current requirements will remain in effect.

We are adding these requirements in final sections 404.1717(a)(4) and 416.1517(a)(4), 404.1714(d) and 416.1517(d).

Continuing Education

For a non-attorney representative to receive direct fee payment, both the SSPA and the PRA require that a ''representative demonstrate[] ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under [titles II and XVI of the Act. The] continuing education, and the instructors providing such education, [must] meet [the] standards [that we] prescribe.'' [23]

After the SSPA, we published a notice in the **Federal Register** that explained how we would administer this requirement.[24] We stated that we would generally defer to organizations providing courses as to the subject matter, the requirements for receiving credit for an hour of instruction, and the qualifications of instructors. However, we reserved the right to reject specific courses or instructors if we determined that a course or instructor was unacceptable. We created a framework in which we required certain hours of continuing education requirements during certain time periods, depending on how long a representative participated in the demonstration project and whether the representative was a course instructor. We required eligible non-attorney representatives to report their continuing education information to us, and we specified which information to report.

We have found the framework that balanced hours and length of participation to be unnecessarily complex for representatives to follow and for us to administer. We also believe that some of the continuing education courses lacked sufficient substance. To help ensure that non-attorney representatives receive pertinent and adequate continuing education, we are revising our rules to require that each non-attorney representative who is eligible to receive direct fee payment ''[c]ompletes and provides proof that he or she has completed all continuing education courses that we prescribe by the deadlines we prescribe'' in final sections 404.1717(a)(7) and 416.1517(a)(7). We will no longer follow our prior formula to calculate continuing education hour requirements. Instead, we will prescribe which courses representatives must take, and we will select courses that we deem necessary to enhance the representative's professional knowledge in matters such as those related to entitlement to benefits, ethics, the Listing of Impairments,[25] and other disability topics under titles II and XVI of the Act. We will also prescribe when representatives must complete the courses and how representatives will certify that they have completed the courses. We will notify the public and eligible non-attorney representatives about specific course requirements. We will notify the public of any relevant changes through alternate methods, such as through our Web site: *http://www.socialsecurity.gov/representation.*

If a representative does not take the prescribed continuing education courses or provide us with the necessary proof

[21] Section 303(b)(4) of the SSPA and section 3 of the PRA.

[22] 70 FR at 2449.

[23] Section 303(b)(5) of the SSPA and section 3 of the PRA.

[24] 70 FR 41250–41251.

[25] 20 CFR part 404 subpart P appendix 1, which also applies to title XVI of the Act under 20 CFR 416.925.

that he or she has completed the prescribed courses, the representative will be ineligible for direct fee payment for at least 6 full calendar months. We provide more details about this in the *Ineligibility and Protest Procedures* section, below.

Representational Experience

The SSPA gave us discretion to establish additional requirements for non-attorneys to receive direct fee payment.[26] We published two notices in the **Federal Register** in which we explained an additional requirement that non-attorney representatives have certain minimum representational experience.[27] We stated that each applicant must show that he or she represented at least five claimants before us within a 24-month period within the 60 months before the month in which the applicant filed the application. We also described the types of work that would qualify, and we provided examples of how we would calculate the 24- and 60-month periods.

Although the PRA also gives us discretion to establish additional requirements,[28] we have decided not to continue with the representational experience requirement. We found that this requirement unnecessarily complicated the application process without adding significant benefit. In our experience administering the demonstration project, we found that passing the written examination is a better barometer to assess representatives' knowledge and skills.

Ineligibility and Protest Procedures

Both the SSPA and the PRA require that non-attorney representatives meet the requirements listed above before we determine that they are eligible to receive direct fee payment.[29] Once we determine that a non-attorney representative is eligible to receive direct fee payment, he or she must continue to meet all of the requirements.

After the SSPA, we published a notice in the **Federal Register** that explained how an applicant could protest our action finding that he or she was ineligible to take the examination or receive direct fee payment.[30] We stated that we would notify non-attorney representatives in these situations.

If an applicant timely paid the application fee but submitted an incomplete application, we would notify the applicant and give him or her 6 weeks after the close of the application period to cure the defects. If we determined that an applicant was not qualified to take the examination for reasons other than failure to pay the application fee, such as failing the criminal background investigation, we also would notify the applicant. The applicant could protest our action within 10 calendar days of the date of our notice and use the protest period to correct the defects in his or her application. We also allowed an applicant to file a protest with us if he or she failed the examination.

As stated above, we required eligible non-attorney representatives to continue to meet the requirements to continue to receive direct fee payment.

If we notified an eligible representative that we proposed to suspend direct fee payment because he or she failed to meet our continuing education requirement, we gave the representative 10 calendar days to protest our action and show that he or she met this requirement. If there was no protest, the suspension began on the first day of the month following the month in which the protest period ended. If there was a protest and we still found that the representative was ineligible, we began suspending direct fee payment on the first day of the month following the month in which we notified the representative about our action in response to the protest. We would end the suspension the month after the month we determined that he or she completed all of the unmet requirements.

Similarly, if we notified an eligible representative that we proposed to suspend direct fee payment because he or she failed to meet our insurance coverage requirements, we gave the representative 15 calendar days to protest our action and show that he or she met this requirement. If there was no protest, the suspension began on the first day of the month following the month in which the protest period ended. If there was a protest and we decided that the representative was ineligible, we began suspending direct fee payment on the first day of the month following the month in which we notified the representative about our action in response to the protest. We would end the suspension on the first day of the month following the month in which we notified the representative that he or she again met our requirements.

We stated that every protest must include supporting facts and complete documentation. Our action in response to a protest was final and not subject to further review. We also said that we would not withhold or make direct fee payment to a non-attorney representative in any case in which we effectuated a determination or decision while the suspension is in effect.

In these interim final rules, we are also adding rules about how we handle protests when we determine that a non-attorney representative is not eligible to receive direct fee payment. Our experience administering the demonstration project showed that we could improve upon our protest procedures to make them easier to understand, follow, and administer.

Because it is easier to administer a uniform process, we will now require that a representative submit his or her protest in writing, and we will limit all protests to 10 calendar days from the date he or she receives notice of our action finding him or her ineligible. Our action in response to a protest will remain final and will not be subject to further review.

We will no longer allow applicants to protest failing examination scores. We use several checks to verify the accuracy of scores. Our experience shows that we confirmed all previously protested test scores as being accurate; therefore, we denied all test score protests that applicants filed. As stated earlier, we will allow a representative who fails the examination to reapply during a subsequent application period, but a representative must complete a new application and pay the application fee each time he or she reapplies.

If an applicant does not attest that he or she meets our education or equivalent qualifications requirement and we find that the applicant is ineligible to take the examination because this requirement is not met, we will continue to allow the applicant to protest this finding. If an applicant files a protest and we confirm our earlier finding, we will not allow the applicant to sit for the examination. We will allow the applicant to reapply in a subsequent application period. As stated earlier, an applicant must complete a new application and pay the application fee each time he or she reapplies. As also stated earlier, we will now verify the education or equivalent qualifications requirement after applicants take and pass the examination.

If an applicant takes and passes the examination, but we find that the applicant provided false or misleading information about his or her education or equivalent qualification, we will find that the applicant is ineligible to receive direct fee payment. We will provide the representative with the opportunity to protest our finding. If the representative does not protest, we will make the

[26] Section 303(b) of the SSPA.

[27] 70 FR at 2449 and 70 FR at 41252.

[28] Section 3(a) of the PRA.

[29] Section 303(b) of the SSPA and section 3(a) of the PRA.

[30] 70 FR at 41252.

representative permanently ineligible to receive direct fee payment. If the representative protests and we confirm our earlier finding, we will make the representative permanently ineligible to receive direct fee payment. We may also refer the information to our Office of the General Counsel so it can decide if we should bring sanctions against the representative.

If we find that an applicant does not meet our criminal background check (including a check of our administrative records) and is ineligible to take the examination, we will allow the applicant to protest this finding. If an applicant files a protest and we confirm our earlier finding, we will not allow the applicant to take the examination.

An applicant who passes our written examination will only become eligible to receive direct fee payment when he or she provides proof of sufficient liability insurance in an amount we prescribe and provides proof of education or equivalent qualifications. We will not allow an applicant to protest our finding that he or she has not yet provided this documentation. In this situation, an applicant will become eligible to receive direct fee payment once he or she provides this proof, assuming that he or she continues to meet all other eligibility requirements.

We will continue to monitor whether eligible non-attorney representatives meet our requirements and remain eligible to receive direct fee payment. We may find a representative is ineligible to receive direct fee payment if he or she: (1) Provided false or misleading information about his or her bachelor's degree or equivalent qualifications; (2) would fail our criminal background check if conducted today; (3) has not provided sufficient proof of maintaining continuous liability insurance; or (4) has not completed or provided documentation of the required continuing education courses. As stated above, we will send a notice to the representative that states what action we will take and the applicable protest procedures.

If we find that an eligible non-attorney representative provided false or misleading information about his or her bachelor's degree or equivalent qualifications, or would fail our criminal background check if conducted today, we will provide the representative with the opportunity to protest our finding. If the representative does not protest, we will make the representative permanently ineligible to receive direct fee payment beginning with the month after the month the protest period ends. If the representative protests and we confirm our earlier finding, we will make the representative permanently ineligible to receive direct fee payment the month after the month we uphold our finding. We may also refer the information to our Office of the General Counsel so it can decide if we should bring sanctions against the representative.

If we find that an eligible non-attorney representative has not completed or provided documentation of the required continuing education courses, we will also provide the representative with the opportunity to protest our finding. If the representative does not protest, the representative will be ineligible for direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the representative protests and the action we take in response to the protest confirms our earlier finding, we will make the representative ineligible for direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. After the 6-month suspension period is over, we will resume direct fee payment to the representative in the first month after the month we find that he or she demonstrates that he or she meets our continuing education requirements. A representative may submit this required documentation at any time during or after the end of the 6-month suspension.

We will also provide an eligible representative with the opportunity to protest our action if we find that a non-attorney representative has not provided sufficient proof that he or she had maintained the continuous liability insurance coverage. If the representative does not protest, the representative will be ineligible for direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the representative protests and the action we take in response to the protest confirms our earlier finding, we will make the representative ineligible for direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. The non-attorney representative may provide us with documentation that he or she maintains the required liability insurance coverage no earlier than in the sixth month of the suspension. After the 6-month suspension period is over, we will resume direct fee payment to the representative in the first month after the month we find that the non-attorney representative again maintains the required liability insurance coverage.

We are adding these requirements in final sections 404.903, 404.1717(d) and (e), 416.1403, and 416.1517(d) and (e).

Currently Ineligible Non-Attorney Representatives

Some non-attorney representatives who became eligible for direct fee payment during the demonstration project are currently suspended from eligibility because they did not maintain the required liability insurance coverage or meet our continuing education requirements. Prior to the effective date of these interim final rules, we may end their suspensions under the current requirements if they provide the necessary proof to us. After the effective date of these interim final rules, we will notify those non-attorney representatives who did not provide sufficient proof and inform them of our new requirements. We will allow these representatives to protest their suspensions under the protest procedures explained in these rules.

Because we are not changing the amount of insurance coverage we currently require, a representative who protests our finding that he or she failed to maintain the required liability insurance must provide documentation showing proof of coverage in the amount listed above. A representative who protests our finding that he or she did not meet our continuing education requirements must provide documentation showing that he or she met our requirements under the demonstration project prior to the effective date of these rules. If the action we take in response to the protest confirms our earlier finding, we will make the representative ineligible for direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding.

Other Changes

We are adding a definition for ''eligible non-attorney'' in final sections 404.1703 and 416.1503 and defining this term to mean ''a non-attorney representative who we determine is qualified to receive direct payment of his or her fee under [20 CFR 404.1717(a) or 416.1517(a)].'' We are also adding a definition for ''date we notify him or her'' in final sections 404.1703 and 416.1503 and defining this phrase to mean ''5 days after the date on the notice, unless the recipient shows us that he or she did not receive it within the 5-day period.'' We also clarify in final sections 404.1717 and 416.1517 that an individual who is a licensed attorney or is suspended or disbarred from the practice of law in any jurisdiction cannot be an eligible non-

attorney. Finally, we are making conforming changes to final sections 404.1720, 404.1730, 416.1520, and 416.1530 for clarity.

Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5), and 1631(d)(1) of the Act, 42 U.S.C. 405(a), 902(a)(5), 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its prior notice and public comment procedures when a Federal agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

With regard to these rules, we find that good cause exists under 5 U.S.C. 553(b)(B) to issue these regulatory changes as interim final rules without prior public comment. Congress enacted the PRA on February 27, 2010, and the statute required us to ''provide for full implementation * * * not later than March 1, 2010.'' [31] Our regulations about withholding for direct fee payment to attorneys and eligible non-attorney representatives under title XVI of the Act and direct fee payment to eligible non-attorney representatives under titles II and XVI of the Act expired on February 28, 2010. In light of the effective date of the changes contained in the PRA, we find it is impracticable not to have implementing regulations while we initiate notice and comment rulemaking proceedings. However, we are inviting public comment on the changes made by these interim final rules and will consider any responsive comments received within 60 days of publication.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these interim final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that these interim final rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These final rules contain public reporting requirements in the regulation sections listed below. We are seeking approval for these regulation sections under OMB Control Number 0960–0699, which we will use to collect the information required by these sections. Below we provide burden estimates for the public reporting requirements.

Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden *
404.1717(a)(5); 416.1517(a)(5)	New Respondents Examination	200	1	120	400
404.1717(a)(3); 416.1517(a)(3)	New Respondents—Submission of proof of Bachelor's Degree or Equivalent Qualifications.	200	1	10	33
404.1717(a)(7); 416.1517(a)(7)	New and Existing Respondents—CE Submission via e-mail/mail/or FAX of training courses taken as prescribed by SSA.	710	1	20	237
404.1717(a)(6); 416.1517(a)(6)	New and Existing Respondents—Proof of Continuous Professional or Business Liability Insurance Coverage (Scan and E-mail).	672	1	10	112
404.1717(a)(6); 416.1517(a)(6)	New and Existing Respondents—Proof of Continuous Professional or Business Liability Insurance Coverage (Copy and Mail).	38	1	15	10
404.1717(d); 416.1517(d)	New and Existing Respondents—Written Protests.	45	1	45	34
Totals		1,865			826

We submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, *Attn:* Desk Officer for SSA. *Fax Number:* 202–395–6974. *E-mail address: OIRA_Submission@omb.eop.gov.*

Social Security Administration, Attn: Reports Clearance Officer, 1333 Annex, 6401 Security Blvd, Baltimore, MD 21235–0001. *Fax Number:* 410–965–6400. *E-mail: OPLM.RCO@ssa.gov.*

You can submit comments until September 26, 2011, which is 60 days after the publication of these rules. However, your comments will be most useful if you send them to us by August 29, 2011, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by e-mail or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—

[31] Section 3(c) of the PRA.

Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 21, 2011.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404 subparts J and R and part 416 subparts N and O as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.903 by adding new paragraph (bb) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(bb) Determining whether a non-attorney representative is eligible to receive direct fee payment as described in § 404.1717 of this part.

Subpart R—[Amended]

■ 3. The authority citation for subpart R of part 404 is revised to read as follows:

Authority: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6).

■ 4. Revise § 404.1703 by adding definitions for ''date we notify him or her'' and ''eligible non-attorney'' in alphabetical order to read as follows:

§ 404.1703 Definitions.

* * * * *

Date we notify him or her means 5 days after the date on the notice, unless the recipient shows us that he or she did not receive it within the 5-day period.

Eligible non-attorney means a non-attorney representative who we determine is qualified to receive direct payment of his or her fee under § 404.1717(a).

* * * * *

■ 5. Revise § 404.1717 to read as follows:

§ 404.1717 Direct payment of fees to eligible non-attorney representatives.

(a) *Criteria for eligibility.* An individual who is a licensed attorney or who is suspended or disbarred from the practice of law in any jurisdiction may not be an eligible non-attorney. A non-attorney representative is eligible to receive direct payment of his or her fee out of your past-due benefits if he or she:

(1) Completes and submits to us an application as described in paragraph (b) of this section;

(2) Pays the application fee as described in paragraph (c) of this section;

(3) Demonstrates that he or she possesses:

(i) A bachelor's degree from an accredited institution of higher learning; or

(ii) At least four years of relevant professional experience and either a high school diploma or a General Educational Development certificate;

(4) Passes our criminal background investigation (including checks of our administrative records), and attests under penalty of perjury that he or she:

(i) Has not been suspended or disqualified from practice before us and is not suspended or disbarred from the practice of law in any jurisdiction;

(ii) Has not had a judgment or lien assessed against him or her by a civil court for malpractice or fraud;

(iii) Has not had a felony conviction; and

(iv) Has not misrepresented information provided on his or her application or supporting materials for the application;

(5) Takes and passes a written examination we administer;

(6) Provides proof of and maintains continuous liability insurance coverage in an amount we prescribe; and

(7) Completes and provides proof that he or she has completed all continuing education courses that we prescribe by the deadline we prescribe.

(b) *Application.* An applicant must timely submit his or her completed application form during an application period that we prescribe. The application must be postmarked by the last day of the application period. If an applicant timely submits the application fee and a defective application, we will give the applicant 10 calendar days after the date we notify him or her of the defect to correct the application.

(c) *Application fee.* An applicant must timely submit his or her application fee during the application period. We will set the fee annually.

(1) We will refund the fee if:

(i) We do not administer an examination, and an applicant was unable to take the rescheduled examination; or

(ii) Circumstances beyond the applicant's control that could not have been reasonably anticipated and planned for prevent an applicant from taking a scheduled examination.

(2) We will not refund the fee if:

(i) An applicant took and failed the examination; or

(ii) An applicant failed to arrive on time for the examination because of circumstances within the applicant's control that could have been anticipated and planned for.

(d) *Protest procedures.*

(1) We may find that a non-attorney representative is ineligible to receive direct fee payment at any time because he or she fails to meet any of the criteria in paragraph (a) of this section. A non-attorney representative whom we find to be ineligible for direct fee payment may protest our finding only if we based it on the representative's failure to:

(i) Attest on the application or provide sufficient documentation that he or she possesses the required education or equivalent qualifications, as described in paragraph (a)(3) of this section;

(ii) Meet at all times the criminal background investigation criteria, as described in paragraph (a)(4) of this section

(iii) Provide proof that he or she has maintained continuous liability insurance coverage, as described in paragraph (a)(6) of this section, after we previously determined the representative was eligible to receive direct fee payment; or

(iv) Complete continuing education courses or provide documentation of the required continuing education courses, as described in paragraph (a)(7) of this section.

(2) A non-attorney representative who wants to protest our finding under paragraph (d)(1) of this section must file a protest in writing and provide all relevant supporting documentation to us within 10 calendar days after the date we notify him or her of our finding.

(3) A representative may not file a protest for reasons other than those listed in paragraph (d)(1) of this section. If a representative files a protest for reasons other than those listed in paragraph (d)(1) of this section, we will not process the protest and will implement our finding as if no protest had been filed. Our finding in response to the protest is final and not subject to further review.

(e) *Ineligibility and suspension.*

(1) If an applicant does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding. If an applicant protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding.

(2) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month we uphold our finding.

(3) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(6) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has acquired and maintains the required liability insurance coverage described in paragraph (a)(6) of this section, no earlier than the sixth month of the ineligibility. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation that the non-attorney representative meets the requirements of paragraph (a)(6) of this section.

(4) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(7) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has satisfied the criteria in paragraph (a)(7) of this section at any time. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation, but not earlier than the month following the end of the 6 month ineligibility period.

(f) *Reapplying.* A representative may reapply to become eligible to receive direct fee payment under paragraph (a) of this section during any subsequent application period if he or she:

(1) Did not meet the initial criteria for eligibility in paragraphs (a)(1), (a)(2), (a)(3), or (a)(5) of this section in a prior application period; or

(2) Failed to timely correct a defective application in a prior application period, as described in paragraph (b) of this section.

■ 6. Amend § 404.1720 by revising paragraph (b)(4) to read as follows:

§ 404.1720 Fee for a representative's services.

* * * * *

(b) * * *

(4) If your representative is an attorney or an eligible non-attorney, and you are entitled to past-due benefits, we will pay the authorized fee, or a part of the authorized fee, directly to the attorney or eligible non-attorney out of the past-due benefits, subject to the limitations described in § 404.1730(b)(1). If the representative is a non-attorney who is ineligible to receive direct fee payment, we assume no responsibility for the payment of any fee that we have authorized.

* * * * *

■ 7. Amend § 404.1730 by revising the first sentence of paragraph (a), heading and introductory text of paragraph (b)(1), heading and the first sentence of paragraph (b)(2), heading of paragraph (c), and paragraph (c)(1) to read as follows:

§ 404.1730 Payment of fees.

(a) *Fees allowed by a Federal court.* We will pay an attorney representative out of your past-due benefits the amount of the fee allowed by a Federal court in a proceeding under title II of the Act.

* * *

(b) *Fees we may authorize—*

(1) *Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney, and as a result of the determination or decision you have past-due benefits, we will pay the representative out of the past-due benefits, the smaller of the amounts in paragraph (b)(1)(i) or (ii) of this section, less the amount of the assessment described in paragraph (d) of this section.

* * * * *

(2) *Non-attorneys ineligible for direct payment.* If the representative is a non-attorney who is ineligible to receive direct payment of his or her fee, we assume no responsibility for the payment of any fee that we authorized.

* * *

* * * * *

(c) *Time limit for filing request for approval of fee to obtain direct payment.* (1) To receive direct fee payment from your past-due benefits, a representative who is an attorney or an eligible non-attorney should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices, or electronically at the times and in the manner that we prescribe if we give notice that such a method is available, within 60 days of the date we mail the notice of the favorable determination or decision.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 8. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 9. Amend § 416.1403 by adding new paragraph (a)(26) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(26) Determining whether a non-attorney representative is eligible to receive direct fee payment as described in § 416.1517 of this part.

* * * * *

■ 10. The authority citation for subpart O of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6 and 1383(d)).

■ 11. Revise § 416.1503 by adding definitions for ''date we notify him or her'' and ''eligible non-attorney'' in alphabetical order to read as follows:

§ 416.1503 Definitions.

* * * * *

Date we notify him or her means 5 days after the date on the notice, unless the recipient shows us that he or she did not receive it within the 5-day period.

Eligible non-attorney means a non-attorney representative who we determine is qualified to receive direct payment of his or her fee under § 416.1517(a).

* * * * *

■ 12. Revise § 416.1517 to read as follows:

§ 416.1517 Direct payment of fees to eligible non-attorney representatives.

(a) *Criteria for eligibility.* An individual who is a licensed attorney or who is suspended or disbarred from the practice of law in any jurisdiction may not be an eligible non-attorney. A non-attorney representative is eligible to receive direct payment of his or her fee out of your past-due benefits if he or she:

(1) Completes and submits to us an application as described in paragraph (b) of this section;

(2) Pays the application fee as described in paragraph (c) of this section;

(3) Demonstrates that he or she possesses:

(i) A bachelor's degree from an accredited institution of higher learning; or

(ii) At least four years of relevant professional experience and either a high school diploma or a General Educational Development certificate;

(4) Passes our criminal background investigation (including checks of our administrative records), and attests under penalty of perjury that he or she:

(i) Has not been suspended or disqualified from practice before us and is not suspended or disbarred from the practice of law in any jurisdiction;

(ii) Has not had a judgment or lien assessed against him or her by a civil court for malpractice or fraud;

(iii) Has not had a felony conviction; and

(iv) Has not misrepresented information provided on his or her application or supporting materials for the application;

(5) Takes and passes a written examination we administer;

(6) Provides proof of and maintains continuous liability insurance coverage in an amount we prescribe; and

(7) Completes and provides proof that he or she has completed all continuing education courses that we prescribe by the deadline we prescribe.

(b) *Application.* An applicant must timely submit his or her completed application form during an application period that we prescribe. The application must be postmarked by the last day of the application period. If an applicant timely submits the application fee and a defective application, we will give the applicant 10 calendar days after the date we notify him or her of the defect to correct the application.

(c) *Application fee.* An applicant must timely submit his or her application fee during the application period. We will set the fee annually.

(1) We will refund the fee if:

(i) We do not administer an examination, and an applicant was unable to take the rescheduled examination; or

(ii) Circumstances beyond the applicant's control that could not have been reasonably anticipated and planned for prevent an applicant from taking a scheduled examination.

(2) We will not refund the fee if:

(i) An applicant took and failed the examination; or

(ii) An applicant failed to arrive on time for the examination because of circumstances within the applicant's control that could have been anticipated and planned for.

(d) *Protest procedures.*

(1) We may find that a non-attorney representative is ineligible to receive direct fee payment at any time because he or she fails to meet any of the criteria in paragraph (a) of this section. A non-attorney representative whom we find to be ineligible for direct fee payment may protest our finding only if we based it on the representative's failure to:

(i) Attest on the application or provide sufficient documentation that he or she possesses the required education or equivalent qualifications, as described in paragraph (a)(3) of this section;

(ii) Meet at all times the criminal background investigation criteria, as described in paragraph (a)(4) of this section

(iii) Provide proof that he or she has maintained continuous liability insurance coverage, as described in paragraph (a)(6) of this section, after we previously determined the representative was eligible to receive direct fee payment; or

(iv) Complete continuing education courses or provide documentation of the required continuing education courses, as described in paragraph (a)(7) of this section.

(2) A non-attorney representative who wants to protest our finding under paragraph (d)(1) of this section must file a protest in writing and provide all relevant supporting documentation to us within 10 calendar days after the date we notify him or her of our finding.

(3) A representative may not file a protest for reasons other than those listed in paragraph (d)(1) of this section. If a representative files a protest for reasons other than those listed in paragraph (d)(1) of this section, we will not process the protest and will implement our finding as if no protest had been filed. Our finding in response to the protest is final and not subject to further review.

(e) *Ineligibility and suspension.*

(1) If an applicant does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding. If an applicant protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding.

(2) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph

(d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month we uphold our finding.

(3) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(6) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has acquired and maintains the required liability insurance coverage described in paragraph (a)(6) of this section, no earlier than the sixth month of the ineligibility. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation that the non-attorney representative meets the requirements of paragraph (a)(6) of this section.

(4) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(7) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has satisfied the criteria in paragraph (a)(7) of this section at any time. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation, but not earlier than the month following the end of the 6 month ineligibility period.

(f) *Reapplying.* A representative may reapply to become eligible to receive direct fee payment under paragraph (a) of this section during any subsequent application period if he or she:

(1) Did not meet the initial criteria for eligibility in paragraphs (a)(1), (2), (3), and (5) of this section in a prior application period; or

(2) Failed to timely correct a defective application in a prior application period as described in paragraph (b) of this section.

■ 13. Amend § 416.1520 by revising paragraph (b)(4) to read as follows:

§ 416.1520 Fee for a representative's services.

* * * * *

(b) * * *

(4) If your representative is an attorney or an eligible non-attorney, and you are entitled to past-due benefits, we will pay the authorized fee, or a part of the authorized fee, directly to the attorney or eligible non-attorney out of the past-due benefits, subject to the limitations described in § 416.1530(b)(1). If the representative is a non-attorney who is ineligible to receive direct fee payment, we assume no responsibility for the payment of any fee that we have authorized.

* * * * *

■ 14. Amend § 416.1530 by revising the first sentence of paragraph (a), heading and introductory text of paragraph (b)(1), heading and the first sentence of paragraph (b)(2), heading of paragraph (c), and paragraph (c)(1) to read as follows:

§ 416.1530 Payment of fees.

(a) *Fees allowed by a Federal court.* We will pay an attorney representative out of your past-due benefits the amount of the fee allowed by a Federal court in a proceeding under title XVI of the Act. * * *

(b) *Fees we may authorize—*

(1) *Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney, and as a result of the determination or decision you have past-due benefits, we will pay the representative out of the past-due benefits, the smallest of the amounts in paragraphs (b)(1)(i) through (iii) of this section, less the amount of the assessment described in paragraph (d) of this section.

* * * * *

(2) *Non-attorneys ineligible for direct payment.* If the representative is a non-attorney who is ineligible to receive direct payment of his or her fee, we assume no responsibility for the payment of any fee that we authorized. * * *

* * * * *

(c) *Time limit for filing request for approval of fee to obtain direct payment.* (1) To receive direct fee payment from your past-due benefits, a representative who is an attorney or an eligible non-attorney should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices, or electronically at the times and in the manner that we prescribe if we give notice that such a method is available, within 60 days of the date we mail the notice of the favorable determination or decision.

* * * * *

[FR Doc. 2011–19026 Filed 7–27–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 123, and 129

RIN 1400–AC74

[Public Notice 7538]

International Traffic in Arms Regulations: Electronic Payment of Registration Fees

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to change the method of payment to electronic submission of registration fees. The institution of the electronic submission of registration fees will simplify the collection and verification of payments, eliminate the need to manually process and collect returned payments, and eliminate the possibility of lost payments. Definitions for ''Foreign Ownership'' and ''Foreign Control'' are also added.

DATES: *Effective Date:* This rule is effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Lisa V. Aguirre, Director, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Department of State, 2401 E Street, NW., SA–1, Room H1200, Washington, DC 20522–0112; telephone 202–632–2798 or fax 202–632–2878; or e-mail through *DDTCResponseTeam@state.gov,* with the subject line, ''Electronic Payment of Registration Fees.''

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC) is responsible for the collection of registration fees from persons in the business of manufacturing, exporting,

and/or brokering defense articles or defense services.

Previously, registrants submitted registration fees to DDTC by check or money order, and these payments were processed manually. The institution of the electronic submission of registration fees will simplify the collection and verification of payments, eliminate the need to manually process and collect returned payments, and eliminate the possibility of lost payments.

Section 122.2(a) is revised to provide for electronic payment as the sole means of registration fee submission. The form used for obtaining registration, the DS–2032 Statement of Registration, has been revised to reflect that fee payments are to be made electronically. Additionally, the certifications previously required through the transmittal letter referenced in § 122.2(b) of the ITAR are incorporated into the revised DS–2032. Consequently, § 122.2(b) no longer requires a separate transmittal letter; rather, it addresses certain certifications to be made on the Statement of Registration that previously were provided via the transmittal letter. The new § 122.2(b) title will be ''Statement of Registration Certification.''

Definitions for ''ownership'' and ''control'' are removed from part 122 by the removal of § 122.2(c). Definitions for ''Foreign Ownership'' and ''Foreign Control'' constitute the new § 120.37.

Section 122.3(a) is revised to remove reference to the transmittal letter.

The revision to § 129.4(a) is in line with the change in part 122 regarding the provision of electronic payment of registration fees. References to the transmittal letter are removed from §§ 129.4(a) and (b).

Title and number of the registration form is corrected in § 120.28(a)(2), and § 123.16(b)(9) is revised to correct a reference to § 122.2(c) and replace it with a reference to § 120.37.

This rule was first presented as a proposed rule for public comment on February 24, 2011. That comment period ended April 25, 2011. No comments pertinent to this rule were received.

Having thoroughly reviewed and evaluated the rule, the Department has determined that it will accept, and hereby does adopt, the proposed rule as a final rule.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published this rule with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed the amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

The information collection (IC) requirements for the current Statement of Registration (Department of State form DS–2032) are approved under Office of Management and Budget (OMB) control number 1405–0002. This rule imposes new reporting requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35. The Department published a notice in the **Federal Register** (76 FR 10291, with correction at 76 FR 16588) soliciting public comments on the revised information collection and notifying the public that this collection was submitted to OMB for review and approval. No comments pertinent to this rule were received.

Formerly, the ITAR, § 122.2(b), required the respondent to provide separate correspondence (via a ''transmittal letter,'' to accompany the DS–2032, Statement of Registration, submission) certifying criminal history, eligibility, and foreign ownership. Often, this mandate was overlooked by the respondent, resulting in the return without action of the incomplete application. The revised DS–2032 incorporates these certifications within the form, only requiring the user to click on the appropriate response.

Other changes to the Statement of Registration include additional data fields necessary to match electronic payment to the form. Whereas payments

will be received electronically, respondents will continue submitting the DS–2032 in paper format. New data elements specific to electronic payment were not previously required on the DS–2032 because such information is visible on U.S. and foreign bank drafts.

Additionally, data elements are added to ensure clarification during analysis as well as standardization of responses. Specifically, necessary information is listed in the form, only requiring the respondent to make a selection by clicking the applicable checkbox rather than manually entering the information. This enhancement eliminates typographical errors and the misinterpretation of information requested, which often results in the submission of incorrect information.

With these changes, the estimated burden time for completion of the DS–2032 is reduced from two hours to one hour.

List of Subjects in 22 CFR Parts 120, 122, 123, and 129

Arms and munitions, Registration, Exports, Brokering.

Accordingly, for the reasons set forth in the preamble, Title 22, Chapter I, Subchapter M, parts 120, 122, 123, and 129 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

■ 2. In § 120.28, paragraph (a)(2) is revised to read as follows:

§ 120.28 Listing of forms referred to in this subchapter.

* * * * *

(a) * * *

(2) Statement of Registration (Form DS–2032).

* * * * *

§§ 120.33–120.36 [Reserved]

■ 3. Part 120 is amended by reserving §§ 120.33 through 120.36 and adding § 120.37 to read as follows:

§ 120.37 Foreign ownership and foreign control.

Foreign ownership means more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons (as defined in § 120.16). Foreign control means one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Foreign control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities unless one U.S. person controls an equal or larger percentage.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 4. The authority citation for part 122 continues to read as follows:

Authority: Secs. 2 and 38, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.

■ 5. Section 122.2 is revised to read as follows:

§ 122.2 Submission of registration statement.

(a) *General.* An intended registrant must submit a Department of State Form DS–2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House (ACH) is an electronic network used to process financial transactions in the United States. Intended registrants should access the Directorate of Defense Trade Control's Web site at *http://www.pmddtc.state.gov* for detailed guidelines on submitting an ACH electronic payment. Electronic payments must be in U.S. currency and must be payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. In addition, the Statement of Registration must be signed by a senior officer (*e.g.,* Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) *Statement of Registration Certification.* The Statement of Registration of the intended registrant shall include a certification by an authorized senior officer of the following:

(1) Whether the intended registrant, chief executive officer, president, vice presidents, other senior officers or officials (*e.g.,* Comptroller, Treasurer, General Counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) Whether the intended registrant is foreign owned or foreign controlled (see § 120.37 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall also include whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

■ 6. Section 122.3 is amended by revising paragraph (a) introductory text to read as follows:

§ 122.3 Registration fees.

(a) A person who is required to register must do so on an annual basis upon submission of a completed Form DS–2032 and payment of a fee as follows:

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 7. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

■ 8. Section 123.16 is amended by revising paragraph (b)(9) introductory text to read as follows:

§ 123.16 Exemptions of general applicability.

* * * * *

(b) * * *

(9) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (see § 120.37 of this subchapter for definition of foreign ownership and

foreign control) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:
* * * * *

PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 9. The authority citation for part 129 continues to read as follows:

Authority: Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

■ 10. Section 129.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 129.4 Registration statement and fees.

(a) *General.* An intended registrant must submit a Department of State Form DS–2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House (ACH) or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House is an electronic network used to process financial transactions originating from within the United States and SWIFT is the messaging service used by financial institutions worldwide to issue international transfers for foreign accounts. Payment methods (i.e., ACH and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant's account. The originating account must be the registrant's account and not a third party's account. Intended registrants should access the Directorate of Defense Trade Control's Web site at *http://www.pmddtc.state.gov* for detailed guidelines on submitting ACH and SWIFT electronic payments. Payments, including from foreign brokers, must be in U.S. currency, payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (*e.g.,* Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (*e.g.,* foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) A person registering as a broker who is already registered as a manufacturer or exporter in accordance with part 122 of this subchapter must cite their existing manufacturer or exporter registration, and must pay an additional fee according to the schedule prescribed in § 122.3(a) of this subchapter for registration as a broker.
* * * * *

Dated: July 20, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–19115 Filed 7–27–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

Office of the Secretary

43 CFR Parts 4, 30

[Docket ID BIA–2009–0001]

RIN 1076–AF07

Indian Trust Management Reform—Implementation of Statutory Changes

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Final rule; confirmation.

SUMMARY: The Office of the Secretary of the Department of the Interior and Bureau of Indian Affairs (collectively, the Department) are confirming the interim final rule published and effective on February 10, 2011, to implement the latest statutory changes to the Indian Land Consolidation Act, as amended by the 2004 American Indian Probate Reform Act and later amendments (ILCA/AIPRA). The February 10, 2011, publication stated that the Department would review comments on the interim final rule and either confirm the rule or initiate a proposed rulemaking. The Department did not receive any adverse comments, and therefore confirms the rule without change.

DATES: The February 10, 2011, effective date of the interim final rule is confirmed.

FOR FURTHER INFORMATION CONTACT: Michele Singer, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104, *phone:* (505) 563–3805; *fax:* (505) 563–3811; *e-mail: Michele.Singer@bia.gov.*

SUPPLEMENTARY INFORMATION: On February 10, 2011, the Department published an interim final rule (76 FR 7500), under Docket No. BIA–2009–001, to implement the latest statutory changes to ILCA/AIPRA. The rule's changes primarily affect the probate of permanent improvements owned by a decedent that are attached to trust or restricted property owned by the decedent. These changes also affect the purchase of small fractional interests at probate by restricting who may purchase without consent and what interests may be purchased without consent.

The Department stated in the interim final rule that it would address comments received and, by a future publication in the Federal Register, confirm the interim final rule, with or without change, or initiate a proposed rulemaking.

The Department received one comment that expressly indicated it was not a substantive criticism of the rule, but requested a definition for the term ''probate.'' The regulations being amended by the interim final rule, 25 CFR part 15 and 43 CFR part 30, already contain a definition of ''probate.'' See 25 CFR 15.2, 43 CFR 4.201, 30.101. Consequently, the Department did not make any change to the interim final rule as a result of this comment. The comment also included a suggestion regarding estate planning that is outside the scope of the interim final rule.

For these reasons, the Department is confirming the interim final rule without change.

List of Subjects

25 CFR Part 15

Estates, Indians—law.

43 CFR Part 4

Administrative practice and procedure, Claims, Indians, Lawyers.

43 CFR Part 30

Administrative practice and procedure, Claims, Estates, Indians, Lawyers.

Dated: June 27, 2011.

Donald E. Laverdure,

Principal Deputy Assistant Secretary.

Dated: July 12, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–19060 Filed 7–27–11; 8:45 am]

BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0571; FRL–9444–7]

Interim Final Determination To Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to defer imposition of sanctions based on a proposed determination, published elsewhere in this **Federal Register**, that the State of California has submitted a rule that satisfies the requirements of Clean Air Act (CAA) Section 185 fee program.

DATES: This interim final determination is effective on July 28, 2011. However, comments will be accepted until August 29, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0571, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. E-mail: steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

On January 13, 2010 (75 FR 1716), EPA published a final limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). EPA's final action concerned SJVUAPCD Rule 3170, ''Federally Mandated Ozone Nonattainment Fee,'' a fee rule which applied to major sources of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) emissions. SJVUAPCD submitted Rule 3170 pursuant to section 185 of the CAA. EPA determined that while Rule 3170 strengthened the SIP, it did not fully meet the requirements of section 185 of the CAA. EPA's final action started a sanctions clock for imposition of offset sanctions 18 months after February 12, 2010 and highway sanctions 6 months after offset sanctions, pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31.

On May 19, 2011, SJVUAPCD amended Rule 3170 and on June 14, 2011, the California Air Resources Board (CARB) submitted amended Rule 3170. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to defer imposition of sanctions that were triggered by our January 13, 2010 limited approval and limited disapproval of Rule 3170, based on a finding that it is more likely than not that the SJVUAPCD has submitted a rule that meets the requirements of sections 172(e) and 185 of the CAA.

EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed approval of Rule 3170, we would take final action proposing to partially or fully disapprove Rule 3170 and lifting this deferral of the sanctions. If no comments are submitted that change our assessment, then with regard to the failure to meet the requirements of section 185 of the CAA, any imposed sanctions would no longer apply and any sanction clocks would be permanently terminated on the effective date of a final approval of Rule 3170.

II. EPA Action

We are making an interim final determination to defer CAA section 179 sanctions associated with SJVUAPCD's 1-hour Ozone CAA section 185 obligation based on our concurrent proposal to fully approve Rule 3170 as meeting sections 172(e) and 185 of the CAA.

Because EPA has preliminarily determined that Rule 3170 meets the requirements of sections 172(e) and 185 of the CAA and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that meets sections 172(e) and 185 of the CAA that was the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with

respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. § 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers Federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 28, 2011. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements.

Dated: July 19, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–18992 Filed 7–27–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8189]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance

with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Maryland: Baltimore County, Unincorporated Areas.	240010	March 24, 1972, Emerg; March 2, 1981, Reg; August 2, 2011, Susp.	Aug. 2, 2011	Aug. 2, 2011.
Region IV				
Kentucky:				
Midway, City of, Woodford County	210477	N/A, Emerg; September 17, 2008, Reg; August 2, 2011, Susp.	.....do*	Do.
Versailles, City of, Woodford County.. ..	210231	April 21, 1989, Emerg; May 1, 1990, Reg; August 2, 2011, Susp.	.....do	Do.
Woodford County, Unincorporated Areas.	210230	March 30, 1973, Emerg; June 1, 1978, Reg; August 2, 2011, Susp.	.....do	Do.
Mississippi:				
Attala County, Unincorporated Areas	280301	April 23, 1979, Emerg; June 1, 1988, Reg; August 2, 2011, Susp.	.....do	Do.
Ethel, Town of, Attala County	280006	December 1, 2008, Emerg; October 6, 2009, Reg; August 2, 2011, Susp.	.....do	Do.
Kosciusko, City of, Attala County	280007	November 15, 1974, Emerg; July 2, 1979, Reg; August 2, 2011, Susp.	.....do	Do.
McCool, Town of, Attala County	280008	July 23, 2009, Emerg; N/A, Reg; August 2, 2011, Susp.	.....do	Do.
South Carolina:				
Lockhart, Township of, Union County. ..	450241	April 8, 1987, Emerg; February 1, 1991, Reg; August 2, 2011, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Union, City of, Union County.	450186	June 19, 1975, Emerg; July 16, 1981, Reg; August 2, 2011, Susp.	.....do	Do.
Region V				
Illinois:				
Abingdon, City of, Knox County	170348	July 24, 1975, Emerg; February 6, 1984, Reg; August 2, 2011, Susp.	.....do	Do.
Buda, Village of, Bureau County	171011	July 21, 1983, Emerg; July 21, 1983, Reg; August 2, 2011, Susp.	.....do	Do.
Bureau County, Unincorporated Areas	170729	July 25, 1973, Emerg; June 15, 1984, Reg; August 2, 2011, Susp.	.....do	Do.
Cherry, Village of, Bureau County	170011	September 20, 1976, Emerg; January 14, 1983, Reg; August 2, 2011, Susp.	.....do	Do.
Dalzell, Village of, Bureau County	170851	February 20, 1976, Emerg; September 24, 1984, Reg; August 2, 2011, Susp.	.....do	Do.
DePue, Village of, Bureau County	170012	August 13, 1974, Emerg; May 1, 1985, Reg; August 2, 2011, Susp.	.....do	Do.
Galesburg, City of, Knox County	170349	April 3, 1975, Emerg; June 19, 1985, Reg; August 2, 2011, Susp.	.....do	Do.
Knox County, Unincorporated Areas	170914	January 6, 1976, Emerg; August 24, 1984, Reg; August 2, 2011, Susp.	.....do	Do.
Knoxville, City of, Knox County	170350	July 16, 1975, Emerg; February 27, 1984, Reg; August 2, 2011, Susp.	.....do	Do.
London Mills, Village of, Knox County ..	170763	January 7, 1976, Emerg; October 15, 1982, Reg; August 2, 2011, Susp.	.....do	Do.
Manlius, Village of, Bureau County	170013	October 1, 1975, Emerg; January 28, 1983, Reg; August 2, 2011, Susp.	.....do	Do.
Princeton, City of, Bureau County	170014	March 24, 1975, Emerg; September 4, 1985, Reg; August 2, 2011, Susp.	.....do	Do.
Spring Valley, City of, Bureau County ..	170015	April 28, 1975, Emerg; September 18, 1985, Reg; August 2, 2011, Susp.	.....do	Do.
Tiskilwa, Village of, Bureau County	170016	September 8, 1975, Emerg; August 19, 1985, Reg; August 2, 2011, Susp.	.....do	Do.
Walnut, Village of, Bureau County	170017	April 14, 1975, Emerg; March 15, 1984, Reg; August 2, 2011, Susp.	.....do	Do.
Indiana:				
Bristol, Town of, Elkhart County	180060	July 11, 1975, Emerg; April 16, 1979, Reg; August 2, 2011, Susp.	.....do	Do.
Elkhart, City of, Elkhart County	180057	February 9, 1973, Emerg; August 1, 1979, Reg; August 2, 2011, Susp.	.....do	Do.
Elkhart County, Unincorporated Areas ..	180056	February 9, 1973, Emerg; November 1, 1979, Reg; August 2, 2011, Susp.	.....do	Do.
Goshen, City of, Elkhart County	180058	March 30, 1973, Emerg; August 1, 1979, Reg; August 2, 2011, Susp.	.....do	Do.
Middlebury, Town of, Elkhart County	180460	August 17, 1983, Emerg; August 17, 1983, Reg; August 2, 2011, Susp.	.....do	Do.
Nappanee, City of, Elkhart County	180059	May 30, 1975, Emerg; August 15, 1983, Reg; August 2, 2011, Susp.	.....do	Do.
Ohio:				
Covington, Village of, Miami County	390399	July 24, 1975, Emerg; September 2, 1982, Reg; August 2, 2011, Susp.	.....do	Do.
Fletcher, Village of, Miami County	390900	N/A, Emerg; September 4, 1996, Reg; August 2, 2011, Susp.	.....do	Do.
Laura, Village of, Miami County	390835	N/A, Emerg; May 11, 1995, Reg; August 2, 2011, Susp.	.....do	Do.
Miami County, Unincorporated Areas ...	390398	April 1, 1976, Emerg; January 19, 1983, Reg; August 2, 2011, Susp.	.....do	Do.
Piqua, City of, Miami County	390400	May 27, 1975, Emerg; November 9, 1979, Reg; August 2, 2011, Susp.	.....do	Do.
Troy, City of, Miami County	390402	March 12, 1975, Emerg; June 15, 1979, Reg; August 2, 2011, Susp.	.....do	Do.
West Milton, Village of, Miami County ..	390403	June 24, 1975, Emerg; June 15, 1979, Reg; August 2, 2011, Susp.	.....do	Do.
Wisconsin:				
Cleveland, Village of, Manitowoc County.	550237	September 7, 1973, Emerg; May 15, 1978, Reg; I≤August 2, 2011, Susp.	.....do	Do.
Kiel, City of, Manitowoc County	550239	July 10, 1975, Emerg; January 3, 1985, Reg; August 2, 2011, Susp.	.....do	Do.
Manitowoc, City of, Manitowoc County	550240	May 21, 1971, Emerg; April 15, 1977, Reg; August 2, 2011, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Manitowoc County, Unincorporated Areas.	550236	July 18, 1973, Emerg; September 15, 1978, Reg; August 2, 2011, Susp.	.....do	Do.
Mishicot, Village of, Manitowoc County	555566	April 9, 1971, Emerg; May 13, 1972, Reg; August 2, 2011, Susp.	.....do	Do.
Reedsville, Village of, Manitowoc County.	550242	June 23, 1975, Emerg; September 30, 1988, Reg; August 2, 2011, Susp.	.....do	Do.
Two Rivers, City of, Manitowoc County	550243	August 22, 1973, Emerg; April 3, 1978, Reg; August 2, 2011, Susp.	.....do	Do.
Region VI				
Arkansas:				
Charleston, City of, Franklin County	050080	May 19, 1975, Emerg; November 15, 1985, Reg; August 2, 2011, Susp.	.....do	Do.
Franklin County, Unincorporated Areas	050432	July 15, 1987, Emerg; July 17, 1997, Reg; August 2, 2011, Susp.	.....do	Do.
Region VII				
Iowa:				
Burlington, City of, Des Moines County	190114	April 15, 1975, Emerg; July 2, 1981, Reg; August 2, 2011, Susp.	.....do	Do.
Des Moines County, Unincorporated Areas..	190113	N/A, Emerg; July 20, 1993, Reg; August 2, 2011, Susp.	.....do	Do.
Iowa County, Unincorporated Areas.	190878	June 9, 2008, Emerg; May 1, 2011, Reg; August 2, 2011, Susp.	.....do	Do.
Ladora, City of, Iowa County.	190425	July 14, 2010, Emerg; May 1, 2011, Reg; August 2, 2011, Susp.	.....do	Do.
Marengo, City of, Iowa County.	190157	September 4, 1974, Emerg; January 16, 1980, Reg; August 2, 2011, Susp.	.....do	Do.
Victor, City of, Iowa County.	190426	June 14, 1976, Emerg; August 1, 1986, Reg; August 2, 2011, Susp.	.....do	Do.
Williamsburg, City of, Iowa County.	190427	November 15, 1976, Emerg; September 6, 1989, Reg; August 2, 2011, Susp.	.....do	Do.
Missouri:				
Perry County, Unincorporated Areas	290280	April 6, 1982, Emerg; January 6, 1988, Reg; August 2, 2011, Susp.	.....do	Do.
Perryville, City of, Perry County.	290282	July 29, 1975, Emerg; August 4, 1983, Reg; August 2, 2011, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: July 13, 2011.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–19044 Filed 7–27–11; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 76, No. 145
Thursday, July 28, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

RIN 3206–AM35

Noncompetitive Appointment of Certain Former Overseas Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to clarify that an employee's same-sex domestic partner qualifies, and should be treated as, a family member for purposes of eligibility for noncompetitive appointment based on overseas employment, as provided in section 315.608 of title 5, Code of Federal Regulations. These regulations implement, in part, a June 2, 2010, Presidential Memorandum by providing same-sex domestic partners with the same employment opportunities that opposite-sex spouses of Federal employees receive under 5 CFR 315.608.

DATES: Comments must be received on or before September 26, 2011.

ADDRESSES: You may submit comments, which are identified by RIN 3206–AM35, by any of the following methods:

- *Federal eRuling Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: employ@opm.gov.* Include ''RIN 3206–AM35, Career and Career-Conditional Employment'' in the subject line of the message.
- *Fax:* (202) 606–4430.
- *Mail:* Angela Bailey, Deputy Associate Director for Recruitment and Hiring, U.S. Office of Personnel Management, Room 6566, 1900 E Street, NW., Washington, DC 20415–9700.

FOR FURTHER INFORMATION CONTACT: Michelle Glynn, 202–606–0960, *Fax:* 202–606–4430 by *TDD:* 202–418–3134, or *e-mail: michelle.glynn@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to amend its current regulations on career and career conditional employment at title 5, Code of Federal Regulations (CFR), part 315. These changes would ensure that an employee's same-sex domestic partner qualifies, and should be treated as, a family member for purposes of eligibility for noncompetitive appointment based on overseas employment, as provided in section 315.608 of title 5, CFR.

Background

On June 17, 2009, President Obama issued a memorandum regarding Federal benefits and non-discrimination that requested the Secretary of State and the Director of OPM, in consultation with the Department of Justice, to extend previously identified statutorily based benefits that those agencies believed could be extended to qualified same-sex domestic partners of Federal employees consistent with underlying law. This memorandum also directed the heads of executive departments and agencies, in consultation with OPM, to conduct a review of the benefits offered by their respective departments and agencies to determine whether they had the authority to extend such benefits to the same-sex domestic partners of Federal employees. The memorandum further requested that OPM, in consultation with the Department of Justice, make recommendations regarding any additional measures that could be taken to provide benefits to the same-sex domestic partners of Federal Government employees, consistent with existing law.

On June 2, 2010, the President issued another memorandum, entitled ''Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' that published the results of the review and identified the benefits that could be extended to same-sex domestic partners and their families. This proposed regulation responds to Section 1(a)(iii) of the President's memorandum, which identified additional benefits OPM had concluded it could offer and requested OPM to ''issue a proposed rule that would clarify that employees' same-sex domestic partners qualify as 'family members' for purposes of noncompetitive appointments made pursuant to Executive Order 12721 of July 30, 1990.''

Also on June 2, 2010, OPM issued a Memorandum for the Heads of Executive Departments and Agencies, entitled ''Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees'' to help fulfill the Administration's policy. The memorandum provides definitions to help ensure its consistent application across the Federal Government.

Section 315.608 of title 5, CFR, authorizes noncompetitive appointments to competitive service positions in the United States for certain family members of Federal employees and military personnel who have served overseas. To be eligible for noncompetitive appointment under this authority, a ''family member'' must have completed 52 weeks of creditable service under a local hire appointment overseas during the time he or she accompanied a Federal civilian employee or member of a uniformed service officially assigned to an overseas location. Family members must also meet all applicable provisions of 5 CFR 315.608 in order to be eligible for noncompetitive appointment. The definition of ''family member'' in 5 CFR 315.608(e)(1) is currently limited to an ''unmarried child under the age of 23 or a spouse.'' To implement section 1(a)(iii) of the President's June 2, 2010, memorandum, OPM is proposing to change the definition of ''family member'' and to add new definitions for ''domestic partner'' and ''domestic partnership'' at 5 CFR 315.608(e).

These definitions are based upon the definitions contained in the Memorandum for the Heads of Executive Departments and Agencies, entitled ''Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' which OPM issued on June 2, 2010.

Paragraph (iv) of the *domestic partnership* definition requires that the partners ''share responsibility for a significant measure of each other's financial obligations.'' This criterion, which appears in this and in prior regulations promulgated pursuant to the President's June 2, 2010, memorandum, is intended to require only that there be financial interdependence between the partners; it should not be interpreted to

exclude partnerships in which one partner stays at home while the other is the primary breadwinner.

We have made a slight change to the wording of criterion (vii). That criterion is intended to prohibit recognition of domestic partnerships between individuals who are related in a manner that would preclude them from marrying were they of opposite sexes. We are maintaining this criterion, but clarifying that the determination is to be made at the time the domestic partnership is formed. It should not be re-examined if the couple relocates to a different jurisdiction. This approach is consistent with treatment of opposite-sex marriages.

For the reasons outlined in the President's June 17, 2009, and June 2, 2010, memoranda, these regulations extend domestic partnership benefits only to same-sex couples who are currently unable to obtain spousal benefits by entering a Federally recognized marriage.

Documentation or proof of a family member relationship for purposes of noncompetitive appointment eligibility would be based on each agency's internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification for all dependent and family member relationships, including domestic partners.

E.O. 12866 and E.O. 13563 Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 and Executive Order 13563.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

List of Subjects

Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 315 as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLYOMENT

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2560. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

2. In § 315.608, paragraph (e)(1) is revised and paragraphs (e)(6) and (e)(7) are added to read as follows:

§ 315.608 Noncompetitive appointment of certain former overseas employees.

(e) * * *

(1) *Family member.* An unmarried child under age 23, a spouse, or a domestic partner. An individual must have been a family member at the time he or she met the overseas service requirement and other conditions but does not need to be a family member at the time of noncompetitive appointment in the United States.

* * * * *

(6) *Domestic partner.* A person in a domestic partnership with an employee or annuitant of the same sex

(7) *Domestic partnership.* A committed relationship between two adults, of the same sex, in which the partners:

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not the domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, shall be determined by the agency; and

(ix) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

* * * * *

[FR Doc. 2011–18971 Filed 7–27–11; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 591

RIN 3206–AM31

Change in Definitions; Evacuation Pay and the Separate Maintenance Allowance at Johnston Island

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is proposing to revise its regulations on evacuation pay and the separate maintenance allowance for duty at Johnston Island to ensure that same-sex domestic partners of Federal employees and the children of such domestic partners have access to these benefits to the same extent as spouses of Federal employees and their children. These changes would fulfill the Administration policy expressed in Sections 1(a)(v) and (a)(vii) of the President's June 2, 2010, memorandum on the ''Extension of Benefits to Same-Sex Domestic Partners of Federal Employees.''

DATES: Comments must be received on or before September 26, 2011.

ADDRESSES: You may submit comments, identified by RIN number ''3206–AM31'' using either of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

Mail: Jerome D. Mikowicz, Deputy Associate Director, Pay and Leave, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Kurt Springmann, by telephone at (202) 606–2858 or by e-mail at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to amend its current regulations on evacuation pay at title 5 CFR, part 550, subpart D, and separate maintenance allowance for duty at Johnston Island, at title 5 CFR, part 591, subpart D. These changes would ensure that same-sex domestic partners of Federal employees and the children of such domestic partners have the same access to these benefits that spouses of Federal employees and their children have.

Background

On June 17, 2009, President Obama issued a memorandum regarding Federal benefits and non-discrimination that requested the Secretary of State and the Director of OPM, in consultation with the Department of Justice, to extend previously identified statutorily based benefits that those agencies believed could be extended to qualified same-sex domestic partners of Federal employees consistent with underlying law. This memorandum also directed the heads of executive departments and agencies, in consultation with OPM, to conduct a review of the benefits offered by their respective departments and agencies to determine whether they had the authority to extend such benefits to the same-sex domestic partners of Federal employees. The memorandum further requested that OPM, in consultation with the Department of Justice, make recommendations regarding any additional measures that could be taken to provide benefits to the same-sex domestic partners of Federal Government employees, consistent with existing law.

On June 2, 2010, the President issued another memorandum, entitled ''Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' that published the results of the review and identified the benefits that could be extended to same-sex domestic partners and their families. This proposed regulation responds to two portions of the President's memorandum, which identified additional benefits OPM had concluded it could offer and requested OPM to (1) ''clarify that under appropriate circumstances, employees' same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522–5523''; and (2) ''clarify that employees' same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.''

Also on June 2, 2010, OPM issued a Memorandum for the Heads of Executive Departments and Agencies, entitled ''Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees'' to help fulfill the Administration's policy. The memorandum provides definitions to help ensure its consistent application across the Federal Government.

Changes to Evacuation Pay Regulations

The law and regulations governing evacuation pay (5 U.S.C. 5522–5523 and subpart D of 5 CFR, part 550) provide for payments to offset certain expenses incurred because of the evacuation of an employee's dependents. In response to the Administration's policy to extend benefits to domestic partners of employees, and their children, where consistent with law, OPM has undertaken to clarify the evacuation pay regulations. OPM is altering its definition of *dependent*, and is adding new definitions for *domestic partner*, *domestic partnership*, and *family member*.

In the current regulations at § 550.402, *dependent* is defined as ''a relative of the employee residing with the employee and dependent on the employee for support.'' OPM proposes to change the definition of *dependent* to read ''a family member of the employee residing with the employee and dependent on the employee for support.'' In order to ensure consistent implementation of the Administration's policy and to clarify the definition of *dependent*, OPM is also adding definitions for *domestic partner*, *domestic partnership*, and *family member*.

These definitions are based upon those contained in the Memorandum for the Heads of Executive Departments and Agencies, entitled ''Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' which OPM issued on June 2, 2010.

Paragraph (4) of the *domestic partnership* definition requires that that the partners ''share responsibility for a significant measure of each other's financial obligations.'' This criterion, which appears in this and in prior regulations promulgated pursuant to the President's June 2, 2010, memorandum, [requires only that there be financial interdependence between the partners; it should not be interpreted to exclude partnerships in which one partner stays at home while the other is the primary breadwinner].

We have made a slight change to the wording of criterion (7). That criterion is intended to prohibit recognition of domestic partnerships between individuals who are related in a manner that would preclude them from marrying were they of opposite sexes. We are maintaining this criterion, but clarifying that the determination is to be made at the time the domestic partnership is formed. It should not be re-examined if the couple relocates to a different jurisdiction. This approach is consistent with treatment of opposite-sex marriages.

For the reasons outlined in the President's June 17, 2009, and June 2, 2010, memoranda, these regulations extend domestic partnership benefits only to same-sex couples, who are currently unable to obtain spousal benefits by entering a Federally recognized marriage.

The definition of *family member* is derived from a regulation recently published in response to the President's original memorandum that amended OPM's regulations on sick leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. This final regulation was published on June 14, 2010 (75 FR 33491), in response to Section 1 of the President's original memorandum.

We believe the modification of the definition of *dependent* and the addition of definitions for *domestic partner, domestic partnership,* and *family member,* read together, provide a full picture of who qualifies for benefits authorized in 5 CFR part 550, subpart D.

Documentation or proof of a dependent or family member relationship for purposes of eligibility for evacuation payments would be based on each agency's internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification of requests for payments for all dependent and family member relationships, including domestic partners.

Changes to Separate Maintenance Allowance for Duty at Johnston Island

In response to the directive to clarify the separate maintenance allowance for duty at Johnston Island for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a, OPM is altering its current definition of *family member,* and is adding new definitions for *domestic partner* and *domestic partnership.*

The current regulations found at § 591.402 define a *family member* as ''one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

OPM proposes to revise the definition of *family member* to add applicable references to domestic partners.

We believe the modification of the definition of *family member* and the addition of definitions for *domestic partner* and *domestic partnership,* clarify coverage for purposes of separate maintenance allowance. The definitions for *domestic partner* and *domestic partnership* are the same as those proposed for the evacuation pay regulations in this publication.

Documentation or proof of a family member relationship for purposes of eligibility for a separate maintenance allowance at Johnston Island will be based on each agency's internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification of requests for payments for all family members relationships, including domestic partners.

Amount of Payment

OPM is also adding a reference to domestic partner in § 591.403(a). The current regulations read: ''The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse and/or one or more other family members, that are maintained at a location other than Johnston Island.'' OPM proposes to change the regulations to say: ''The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse, a domestic partner, and/or one or more other family members, who are maintained at a location other than Johnston Island.'' We believe this helps to clarify the coverage.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR parts 550 and 591 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart D—Payments and Flexibilities During an Evacuation

1. The authority citation for subpart D of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963, p.502.

2. In § 550.402, the definition of ''dependent'' is revised and the definitions of ''domestic partner'', ''domestic partnership'', and ''family member'' are added to read as follows:

§ 550.402 Definitions.

* * * * *

Dependent means a family member of the employee residing with the employee and dependent on the employee for support.

* * * * *

Domestic partner means a person in a domestic partnership with an employee or annuitant of the same sex.

Domestic partnership means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

* * * * *

Family member means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner, and children and parents thereof, including a domestic partner of any individual in paragraphs (2)–(5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

* * * * *

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart D—Separate Maintenance Allowance for Duty at Johnston Island

3. The authority citation for subpart D of part 591 continues to read as follows:

Authority: 5 U.S.C. 5942a(b); E.O. 12822, 3 CFR, 1992 Comp., p. 325.

4. In § 591.402, the definitions of ''domestic partner'' and ''domestic partnership'' are added, and the definition of ''family member'' is revised to read as follows:

§ 591.402 Definitions.

* * * * *

Domestic partner means a person in a domestic partnership with an employee or annuitant of the same sex.

Domestic partnership means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Family member means one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

(1) Children who are unmarried and under 21 years of age or who, regardless of age, are incapable of self-support, including natural children, step and adopted children, and those under legal guardianship or custody of the employee, or of the employee's spouse or domestic partner, when they are expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including step and legally adoptive parents) of the employee, or of the employee's spouse or domestic partner, when such parents are at least 51 percent dependent on the employee for support;

(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee, or of the employee's spouse or domestic partner, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support;

(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance; or

(5) Domestic partner, excluding a domestic partner independently entitled to and receiving a similar allowance.

* * * * *

4. In § 591.403, revise paragraph (a) to read as follows:

§ 591.403 Amount of payment.

(a) The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse, a domestic partner, and/or one or more other family members, who are maintained at a location other than Johnston Island.

* * * * *

[FR Doc. 2011–18975 Filed 7–27–11; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206–AL36

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is proposing to revise its regulations on agencies' use of appropriated funds to provide child care subsidies for lower-income civilian employees, to make the regulations clearer and more concise. It also would make certain technical corrections, and substantive changes including in the definition of ''child'' for purposes of the subpart. The proposed regulations also clarify the scope of regulations concerning alcohol and drug abuse counseling programs for employees and expand the regulations to extend coverage to domestic partners of Federal employees.

DATES: Comments must be received on or before August 29, 2011.

ADDRESSES: Send or deliver comments to Ingrid Burford, Work Life Program Specialist, U.S. Office of Personnel Management, 1900 E Street, NW., Rm. 7456, Washington, DC 20415–9700; or FAX to (202) 606–9939. Comments may also be sent through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking. Please specify the subpart and section number for each comment.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, (202) 606–0416.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule revising part 792 of title 5, Code of Federal Regulations. The proposed rule would make changes in both subparts of that part, concerning employee assistance programs and child care subsidies for low-income employees, respectively, in accordance with the Obama Administration's policy, expressed in Presidential Memoranda dated June 17, 2009, and June 2, 2010, to extend benefits, where possible, to same-sex domestic partners. The changes to subpart A also would remove obsolete references to title 42 of the United States Code.

Background

On June 17, 2009, President Obama issued a Memorandum regarding Federal benefits and non-discrimination that requested the Secretary of State and the Director of OPM, in consultation with the Department of Justice, to extend previously identified statutorily based benefits that those agencies believed could be extended to qualified same-sex domestic partners of Federal employees consistent with underlying law. This Memorandum also directed the heads of executive departments and agencies, in consultation with OPM, to conduct a review of the benefits offered by their respective departments and agencies to determine whether they had the authority to extend such benefits to the same-sex domestic partners of Federal employees. The Memorandum

further requested that OPM, in consultation with the Department of Justice, make recommendations regarding any additional measures that could be taken to provide benefits to the same-sex domestic partners of Federal Government employees, consistent with existing law.

On June 2, 2010, the President issued another Memorandum, entitled ''Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' that published the results of the review and identified the benefits that could be extended to same-sex domestic partners and their families. These proposed regulations respond to Sections 1(a)(i) and (ii) of the President's Memorandum, which identified additional benefits OPM had concluded it could offer and requested OPM to ''(i) clarify that the children of employees' same-sex domestic partners fall within the definition of ''child'' for purposes of Federal child-care subsidies, and, where appropriate, for child-care services'' and ''(ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as ''family members.''

Also on June 2, 2010, OPM issued a Memorandum for the Heads of Executive Departments and Agencies, entitled ''Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees'' to help fulfill the Administration's policy. The Memorandum provides definitions to help ensure its consistent application across the Federal Government.

Changes to Regulations Concerning Drug and Alcohol Abuse Programs

We are including a new provision in section 792.101 of title 5, Code of Federal regulations, to clarify that an employee's domestic partner, and any children of the employee's domestic partner, are included within the employee's ''family'' for purposes of access to alcohol and drug abuse programs. These programs, for the most part, are already accessible by individuals whose personal relationship to the employee (including but not limited to the employee's domestic partner) is close enough to potentially affect the employee's performance on the job. Therefore, the addition of specific references to domestic partners and their children is a clarifying change to promote consistent implementation of this regulation across the Government.

For purposes of this regulation, we have chosen not to define ''domestic partner'' or ''domestic partnership.'' Agencies are already providing access to these programs to individuals who are close enough to the employee to potentially affect the employee's performance on the job. Our intent is to clarify that same-sex domestic partners meet this standard, but not to limit agency discretion to decide that other relationships, including opposite-sex domestic partnerships, also meet this standard.

Changes to Child Care Subsidies Regulations

The proposed changes to subpart B would clarify and consolidate regulations governing Federal agencies' use of appropriated funds to provide child care subsidies for lower-income civilian employees. The revision would correct the way the age limitation for covered children is expressed and update obsolete references and citations. The regulations currently provide that the subsidies may apply to child care for children from birth *through* age 13 and for disabled children *through* age 18. We are amending this provision to state that the regulations apply to children *under* age 13 and disabled children *under* age 18. This change will help ensure that agency child care subsidy programs under part 792 conform to qualification rules used by the Internal Revenue Service for determining the tax treatment of dependent care assistance plans.

The proposed rule would make additional clarifying changes, including elimination of the question-and-answer format that currently appears in subpart B. We are adopting a narrative format to consolidate and remove repetitive content and content that is not regulatory in nature. The changes also include certain corrections to definitions, such as removing the ''living with'' requirement from the definition of ''biological child'' and changing the defined term from ''child care contractor'' to ''child care provider'', which is the term actually used in the regulation.

We are also adding definitions of ''domestic partner'' and ''domestic partnership'' to subpart B. These definitions are based upon the OPM Memorandum described earlier in this Supplementary Information and have been used in other OPM regulations.

Paragraph (4) of the *domestic partnership* definition requires that the partners ''share responsibility for a significant measure of each other's financial obligations.'' This criterion, which appears in this and in prior regulations promulgated pursuant to the President's June 2, 2010, memorandum, is intended to require only that there be financial interdependence between the partners; it should not be interpreted to exclude partnerships in which one partner stays at home while the other is the primary breadwinner.

We have made a slight change to the wording of criterion (7). That criterion is intended to prohibit recognition of domestic partnerships between individuals who are related in a manner that would preclude them from marrying were they of opposite sexes. We are maintaining this criterion, but clarifying that the determination is to be made at the time the domestic partnership is formed. It should not be re-examined if the couple relocates to a different jurisdiction. This approach is consistent with treatment of opposite-sex marriages.

Unlike the change to the regulations involving drug and alcohol abuse programs discussed above, these regulations extend ''domestic partnership'' benefits only to same-sex couples who are currently unable to obtain spousal benefits by entering into a Federally recognized marriage. That is because child care subsidies are currently available only for expenses associated with the employee's children or children of the employee's spouse. Accordingly, it is appropriate to include the children of same-sex domestic partners in order to reflect the President's direction to extend benefits to the same-sex domestic partners of Federal employees to the same extent such benefits are available to opposite-sex spouses, consistent with law.

The reference in paragraph (8) of the *domestic partnership* definition to documentation or proof of a dependent or family member relationship for purposes of eligibility for evacuation payments would be based on each agency's internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification of requests for payments for all dependent and family member relationships, including domestic partners.

We are also proposing to change OPM's annual requirement to produce a report on agencies' use of the authority to pay child care subsidies, to a biannual requirement. OPM will continue, however, to collect annual data from Federal agencies on their child care subsidy programs.

Finally, these proposed regulations would update the authority citation for part 792 and would change the title of

the part from ''Federal Employees' Health and Counseling Programs'' to ''Federal Employees' Health, Counseling, and Work/Life Programs'' so that it is broad enough to encompass the child care subsidy program.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 and 13563.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 792 as follows:

1. The title is amended to read as follows:

PART 792—FEDERAL EMPLOYEES' HEALTH, COUNSELING, AND WORK/LIFE PROGRAMS

2. The authority citation for part 792 is revised to read as follows:

Authority: 5 U.S.C. 7361–7363; Sec. 643, Pub. L. 106–58, 113 Sta. 477; 40 U.S.C. 590(g). Daily Comp. Pres. Docs., 2010 DCPD No. 00450, p. 1.

3. The heading for subpart A is revised to read as follows:

Subpart A—Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees

4. Section 792.101 is revised to read as follows:

§ 792.101 Statutory requirements.

Sections 7361 and 7362 of title 5, United States Code, provide that the Office of Personnel Management is responsible for developing and maintaining, in cooperation with the Secretary of the Department of Health and Human Services and with other agencies, appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and drug abuse problems. To the extent feasible, agencies are encouraged to extend services to families (including domestic partners and their children) of alcohol and/or drug abusing employees and to employees who have family members (including domestic partners and their children) who have alcohol and/or drug problems. Such programs and services shall make optimal use of existing Government facilities, services, and skills.

5. Section 792.102 is revised to read as follows:

§ 792.102 General.

It is the policy of the Federal Government to offer appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and drug problems. Short-term counseling or referral, or offers thereof, shall constitute the appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse, alcoholism, and drug abuse required under subchapter VI of chapter 73 of title 5, United States Code. Federal agencies must establish programs to assist employees with these problems in accordance with that subchapter.

6. Section 792.105 is amended by revising paragraph (b) to read as follows:

§ 792.105 Agency responsibilities.

* * * * *

(b) Agencies must issue internal instructions implementing the requirements of 5 U.S.C. 7361–7363 and this subpart.

* * * * *

7. Subpart B is revised to read as follows:

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

Sec.

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

§ 792.201 Purpose.

The purpose of this subpart is to implement section 590(g) of title 40, United States Code, which permits an Executive agency to use appropriated funds to improve the affordability of child care for lower-income employees. The law applies to child care in the United States and in overseas locations. Employees can benefit from reduced child care rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

§ 792.202 Definitions.

In this subpart—

Child means a child who bears any of the following relationships to either an employee, the employee's spouse, or the employee's domestic partner:

(1) A biological child;

(2) An adopted child;

(3) A stepchild;

(4) A foster child;

(5) A child for whom a judicial determination of support has been obtained; or

(6) A child to whose support the employee, the employee's spouse, or the employee's domestic partner makes regular and substantial contributions.

Child care provider means an individual or entity providing child care services for which Federal employees' families are eligible. The provider must be licensed or regulated, and the provider's services can be provided in a Federally-sponsored child care center, a non-Federal center, or a family child care home.

Child care subsidy program means the program established by an agency in using appropriated funds, as provided in this subpart, to assist lower-income employees with child care costs. The program can include such activities as determining which employees receive a subsidy and the size of their subsidies; distributing agency funds to participating providers; and tracking and reporting information to OPM such as total cost and employee use of the program.

Disabled child means a child who is unable to care for himself or herself because of a physical or mental condition as determined by a physician or licensed or certified psychologist.

Domestic partner means a person in a domestic partnership with an employee or annuitant of the same sex.

Domestic partnership means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to a contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Employee means an employee as defined in section 2105 of title 5, United States Code.

Executive agency means an Executive agency as defined in 5 U.S.C. 105 but does not include the Government Accountability Office.

Federally-sponsored child care center means a child care center located in a building or space that is owned or leased by the Federal Government.

OPM means the U.S. Office of Personnel Management.

§ 792.203 Child care subsidy programs; eligibility.

(a)(1) An Executive agency may establish a child care subsidy program in which the agency uses appropriated funds, in accordance with this subpart, to assist lower-income employees of the agency with their child care costs. The assistance may be provided for both full-time and part-time child care, and may include before-and-after-school programs and daytime summer programs.

(2) Two or more agencies may pool their funds to establish a child care subsidy program for the benefit of employees who are served by a Federally-sponsored child care center in a multi-tenant facility.

(3)(i) Except as provided under paragraph (a)(3)(ii) of this section, an agency may impose restrictions on the use of appropriated funds for its child care subsidy program based on consideration of employees' needs, its own staffing needs, the local availability of child care, and other factors as determined by the agency. For example, an agency may decide to restrict eligibility for subsidies to—

(I) Full-time permanent employees;

(II) Employees using an agency on-site child care center;

(III) Employees using full-time child care; or

(IV) Employees using child care in specific locations.

(ii) An agency may not limit the payment of subsidies to only accredited child care providers.

(b) Subject to any restrictions applicable under paragraph (a)(3)(i) of this section, an employee who qualifies as a lower-income employee under the agency's child care subsidy program is eligible to receive a child care subsidy for the care of each child under age 13 or, in the case of a disabled child, under age 18.

§ 792.204 Agency responsibilities; reporting requirement.

(a) Before funds may be obligated as provided in this subpart, an agency intending to initiate a child care subsidy program must provide notice to the Subcommittees on Financial Services and General Government of the House and Senate Appropriations Committees, as well as to OPM.

(b) Agencies must notify the committees referred to in paragraph (a) of this section and OPM annually of their intention to provide child care subsidies. Funds may be obligated immediately after the notifications have been made.

(c) Agencies are responsible for tracking the utilization of their funds and reporting the results to OPM in a manner prescribed by OPM.

(d) OPM will produce a biannual report on agencies' use of the authority to pay child care subsidies; however, OPM will collect annual data from the agencies.

§ 792.205 Administration of child care subsidy programs.

(a) An agency may administer its child care subsidy program directly or by contract with another entity, using procedures prescribed under the Federal Acquisition Regulations. Regardless of what entity administers the program, the Federal agency is responsible for establishing how eligibility and subsidy amounts will be determined.

(b) An agency contract must specify that any unexpended funds will be returned to the agency after the contract is completed.

§ 792.206 Payment of subsidies.

(a) Payment of child care subsidies must be made directly to child care providers, unless one of the following exceptions applies:

(1) In overseas locations, the agency may pay the employee if the provider deals only in foreign currency.

(2) In unique circumstances, an agency may obtain written permission from OPM to pay the employee directly.

(b) An agency may make advance payments to a child care provider in certain circumstances, such as when the provider requires payment up to one month in advance of rendering services. An agency may not make advance payments for more than one month before the employee receives child care services except where an agency has contracted with another entity to administer the child care subsidy program, in which case the agency may advance payments to the entity administering the program as long as the requirements in § 792.205(b) are met.

[FR Doc. 2011–18976 Filed 7–27–11; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0555; Directorate Identifier 2009–NE–18–AD]

Airworthiness Directives; Honeywell International Inc. TPE331–10 and TPE331–11 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed an airworthiness directive (AD) supersedure, applicable to Honeywell International Inc. TPE331–10 and TPE331–11 series turboprop engines. That action would have required adding 360 first stage turbine disk serial numbers (S/Ns) to the applicability. Since we issued that NPRM, we decided not to supersede AD 2009–17–05, but instead to issue a new NPRM for those additional 360 parts. Accordingly, we withdraw the proposed rule.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *phone:* 562–627–5246; *fax:* 562–627–5210; *e-mail: joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD),

applicable to Honeywell International Inc. TPE331–10 and TPE331–11 series turboprop engines, was published in the **Federal Register** on June 22, 2010 (75 FR 35354). The proposed rule would have added 360 S/Ns to the applicability of AD 2009–17–05. The proposed actions were intended to prevent uncontained failure of the first stage turbine disk and damage to the airplane.

Since we issued that NPRM, we decided not to supersede AD 2009–17–05, as doing so would require us to bring forward the effectivity dates for removal or inspection of the suspect turbine disks listed in the AD. Instead, we are planning to issue a new NPRM that will address the additional 360 turbine disk S/Ns requiring inspection or removal.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. FAA–2009–0555, published in the **Federal Register** on June 22, 2010 (75 FR 35354), is withdrawn.

Issued in Burlington, Massachusetts, on July 22, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–19048 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0571; FRL–9444–6]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, we are proposing to approve San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 3170, ''Federally Mandated Ozone Nonattainment Fee,'' as a revision to SJVUAPCD's portion of the California State Implementation Plan (SIP). Rule 3170 is a local fee rule submitted to address section 185 of the Clean Air Act (CAA or Act). EPA is also proposing to approve SJVUAPCD's fee-equivalent program, which includes Rule 3170 and state law authorities that authorize SJVUAPCD to impose supplemental fees on motor vehicles, as an alternative to the program required by section 185 of the Act. We are proposing that SJVUAPCD's alternative fee-equivalent program is not less stringent than the program required by section 185, and, therefore, is approvable, consistent with the principles of section 172(e) of the Act. As part of this action, we are inviting public comment on whether it is appropriate for EPA to consider alternative programs and, if so, what would constitute an approvable alternative program. We are taking comments on these proposals and plan to follow with a final action.

DATES: Any comments must arrive by August 29, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0571, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. What did the State submit?

On May 19, 2011, SJVUAPCD adopted Rule 3170 as part of SJVUAPCD's alternative fee-equivalent program. On June 14, 2011, the California Air Resources Board (CARB) submitted SJVUAPCD's alternative fee-equivalent program, including Rule 3170 and various state law authorities, to EPA. On June 23, 2011, EPA determined that the submittal met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

II. What action is EPA taking?

EPA is proposing to approve SJVUAPCD Rule 3170 as a revision to SJVUAPCD's portion of the California SIP. Rule 3170 is a local rule that applies to all major stationary sources emitting VOCs and/or NO_X. Rule 3170 requires certain major stationary sources to pay a fee for each ton of VOCs or NO_X emitted in excess of 80% of baseline emissions. Rule 3170 includes an exemption for ''clean units'' and a different calculation of baseline emissions than specified by CAA section 185. Therefore, Rule 3170 also requires SJVUAPCD to track actual NO_X and VOC emissions from all major stationary sources of NO_X and VOCs and demonstrate that it received revenues, pursuant to an alternative mechanism described below, equivalent

to those that would be imposed through section 185 of the Act without the ''clean unit'' exemption, and with a baseline calculated in a manner consistent with CAA 185. Rule 3170 also requires SJVUAPCD to impose additional fees on major stationary sources to remedy any shortfall in revenue. In this action, EPA is also proposing to approve SJVUAPCD's fee-equivalent program as an alternative to the program required by section 185 of the Act. SJVUAPCD's alternative fee-equivalent program includes Rule 3170 and state law authorities that authorize the District to impose a $12 supplemental fee on motor vehicle registrations. We are proposing that SJVUAPCD's alternative fee-equivalent program is not less stringent than the program required by section 185, and, therefore, is approvable, consistent with the principles of section 172(e) of the Act as explained more fully below. We are taking comments on these proposals and plan to follow with a final action.

In a separate interim final action, published in the Rules section in today's **Federal Register**, we are deferring sanctions that would otherwise apply to the SJVUAPCD.

III. Background

Section 185 Fees

Under Sections 182(d)(3), (e), (f) and 185 of the Act, States with ozone nonattainment areas classified as severe or extreme are required to submit a revision to the SIP which requires major stationary sources of VOC or NO_X to pay a fee for each ton of VOC or NO_X emitted in excess of 80% of baseline emissions.[1] Under section 185(a) of the Act, the SIP revision must provide that the fees be paid, if the area to which the SIP revision applies has failed to attain the 1-hour ozone standard by the applicable attainment date. A source's baseline emissions are its actual emissions during the required attainment year. The fee rate is $5,000 per ton in 1990 dollars, which must be adjusted for inflation based on the Consumer Price Index (CPI).

San Joaquin Valley Unified Air Pollution Control District

SJVUAPCD is an extreme nonattainment area for the 1-hour ozone standard, and therefore, California was required under sections 182(d)(3), (e) and (f) to develop and submit a SIP revision meeting the requirements of section 185, which are discussed above. In San Joaquin Valley, under California law, the SJVUAPCD is responsible for developing rules, such as Rule 3170, that are intended to meet CAA SIP requirements. Such rules are then submitted to EPA after adoption by CARB, which is the State agency responsible for SIP matters on behalf of the State of California.

CARB previously submitted an earlier version of SJVUAPCD Rule 3170 to EPA. EPA took final action on this earlier version of Rule 3170 on January 13, 2010. (75 FR 1716). This final action was a limited approval/limited disapproval because, while EPA found that the rule strengthened the SIP, EPA also found that it did not fully comply with the requirements of section 185. EPA identified the following deficiencies as preventing full approval: (i) An exemption for units that began operation after the attainment year; (ii) an exemption for ''clean units;'' (iii) the definition of the baseline period as two consecutive years; (iv) a provision to allow averaging of baseline emissions over 2–5 years); and (v) a definition of ''major source'' inconsistent with the CAA. Because our action was a limited approval and a limited disapproval, our action started sanctions clocks under section 179 of the Act and 40 CFR 52.31.

On June 14, 2011, CARB submitted SJVUAPCD's alternative fee-equivalent program, including amended Rule 3170 as adopted on May 19, 2011 and other state law authorities, to address deficiencies identified in EPA's limited disapproval, to stop the sanctions clocks, and to satisfy SJVUAPCD's obligations under section 185 of the Act.

IV. What is the legal rationale for equivalent alternative programs?

EPA is proposing that states can meet the 1-hour ozone section 185 obligation through a SIP revision containing either the fee program prescribed in section 185 of the Act, or an equivalent alternative program. As further explained below, EPA is proposing that an alternative program may be acceptable if EPA determines, through notice-and-comment rulemaking, that it is consistent with the principles of section 172(e) of the CAA.[2]

Section 172(e) is an anti-backsliding provision of the CAA that requires EPA to develop regulations to ensure that controls in a nonattainment area are ''not less stringent'' than those that applied to the area before EPA revised a national ambient air quality standard (NAAQS) to make it less stringent. In the Phase 1 ozone implementation rule for the 1997 ozone NAAQS published on April 30, 2004 (69 FR 23951), EPA determined that although section 172(e) does not directly apply where EPA has strengthened the NAAQS, as it did in 1997, it was reasonable to apply the same anti-backsliding principle that would apply to the relaxation of a standard for the transition from the 1-hour NAAQS to the more stringent 1997 8-hour NAAQS. As part of applying the principles in section 172(e) for purposes of the transition from the 1-hour standard to the 1997 8-hour standard, EPA can either require states to retain programs that applied for purposes of the 1-hour standard, or alternatively can allow states to adopt alternative programs, but only if such alternatives are determined through notice-and-comment rulemaking to be ''not less stringent'' than the mandated program.

EPA has identified three possible types of alternative programs that could satisfy the section 185 requirement: (i) Those that achieve the same emissions reductions; (ii) those that raise the same amount of revenue and establish a process where the revenues would be used to pay for emission reductions that will further improve ozone air quality; and (iii) those that would be equivalent through a combination of both emission reductions and revenues. Accordingly, we are proposing to determine through notice-and-comment rulemaking, that States can demonstrate an alternative program's equivalency by comparing expected fees and/or emissions reductions directly attributable to application of section 185 to the expected fees and/or emissions reductions from the proposed alternative program. Under an alternative program, states might opt to shift the fee burden from a specific set of major stationary sources to non-major sources, such as owners of mobile sources that also contribute to ozone formation. EPA also believes that alternative programs, if approved as ''not less stringent'' than the section 185

[1] VOCs help produce ground-level ozone and smog, which harm human health and the environment. NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment.

[2] EPA has previously set forth this reasoning in a memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Division Directors, ''Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS,'' January 5, 2010. On July 1, 2011, the DC Circuit Court of Appeals vacated this guidance, on the ground that it was final agency action for which notice-and-comment rulemaking procedures were required. *NRDC* v. *EPA,* No. 10–1056, 2011 WL 2601560, C.A.D.C. 2011. In today's notice, we are applying the court's directive to follow the rulemaking requirements set forth in the Administrative Procedures Act to inform our consideration of section 185 and alternative fee programs. We are therefore inviting the public to comment on whether it is appropriate for EPA to consider an alternative program and, if so, whether SJVUAPCD's program would constitute an approvable alternative program under the CAA.

fee program, would encourage 1-hour ozone NAAQS nonattainment areas to reach attainment as effectively and expeditiously as a section 185 fee program, if not more so, and therefore satisfy the CAA's goal of attainment and maintenance of the NAAQS.

In sum, in order for EPA to approve an alternative program as satisfying the 1-hour ozone section 185 fee program SIP revision requirement, the state must demonstrate that the alternative program is not less stringent than the otherwise applicable section 185 fee program by collecting fees equal to or exceeding the fees that would have been collected under 185.

V. What is EPA's analysis of SJVUAPCD's alternative program?

Summary of SJVUAPCD's Alternative Program

SJVUAPCD's alternative fee-equivalent program consists of Rule 3170 and additional state law materials, including California Assembly Bill 2522 (''AB2522''), now codified at California Health and Safety Code 40610–40613. Rule 3170 applies to major stationary sources of VOCs and NO_X, which in the SJVUAPCD are sources that emit 10 tons per year or more of either pollutant. Rule 3170 differs from CAA section 185 because it exempts ''clean units'' from the assessment of fees and because it allows baseline emissions to be calculated over a multi-year period, rather than a single year as provided in CAA section 185.[3] Because these differences will likely affect the amount of fees collected from major stationary sources, SJVUAPCD's alternative fee-equivalent program provides for the collection of additional fees from motor vehicle registrations, specifically, $12 per year per motor vehicle, as authorized by California AB2522. (Cal. Health and Safety Code §§ 40610–40613).

Rule 3170 requires the Air Pollution Control Officer (APCO) to prepare and submit to EPA an ''Annual Fee Equivalency Demonstration Report'' to show that the total annual fees collected from stationary sources and motor vehicle registrations are at least equal to the amount of annual fees that would have been collected from stationary sources under a fee program as prescribed in section 185 of the Act. If the report shows that the actual collected funds are insufficient to demonstrate equivalency, Rule 3170 requires the collection of additional fees from stationary sources to make up the shortfall. EPA's technical support document (TSD) has more information about SJVUAPCD's alternative fee-equivalent program.

How is EPA evaluating SJVUAPCD's alternative program?

Generally, SIP rules must be enforceable (see section 110(a) of the Act). Guidance and policy documents that we use to evaluate enforceability requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

Also, SIP revisions must not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act (CAA 110(l))).

SJVUAPCD's alternative fee-equivalent program must also be evaluated against section 185 of the Act, as described above under section III of this document. EPA also developed the following guidance on establishing baselines under section 185:

4. Memorandum from William Harnett, Director of the Air Quality Policy Division to the Regional Air Division Directors, entitled, ''Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment Date,'' March 21, 2008.[4]

Does SJVUAPCD's alternative program meet the evaluation criteria?

We believe SJVUAPCD's alternative fee-equivalent program is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and sections 172(e) and 185 of the Act.

First, we propose to determine that our approval of Rule 3170 as revised would comply with CAA sections 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the NAAQS are met, and is more stringent than the version previously approved into the SIP because it corrects the previously-identified deficiencies.

Second, EPA is proposing to find that SJVUAPCD has met its 1-hour ozone NAAQS section 185 obligation through its alternative fee-equivalent program, which includes Rule 3170 and additional state law authorities. Specifically, EPA is proposing to find that SJVUAPCD's alternative fee-equivalent program is acceptable because, consistent with the principles of section 172(e), it is not less stringent than the requirements of section 185.

The version of Rule 3170 we are proposing to approve today contains two provisions that are not directly consistent with section 185: (1) An exemption for ''clean units;'' and (2) an allowance for an alternate baseline period of two consecutive years (2006–2010) if the APCO determines it would be more representative of normal operations. As described below, EPA has determined that SJVUAPCD's alternative fee-equivalent program will make up for any shortfall in collected funds that might result from these two provisions and provides adequate enforcement and oversight mechanisms, as well as a remedy to address any shortfalls, to assure equivalency.

SJVUAPCD's alternative fee-equivalent program provides for the collection of additional fees from motor vehicle registrations, specifically, $12 per year per motor vehicle. This collection of motor vehicle registration fees is authorized by California AB2522 (now codified at Health and Safety Code 40610–40613). AB2522 also requires SJVUAPCD to use these revenues to fund incentive-based programs resulting in NO_X and VOC emissions reductions in the San Joaquin Valley. Rule 3170 requires the APCO to implement a system to track all information with respect to emissions data, the calculation, assessment, and collection of fees from stationary sources, as well as tracking of the amount of collected motor vehicle registration fees. The APCO is required to prepare and submit to EPA an ''Annual Fee Equivalency Demonstration Report'' that shows that the sum of the total fees collected from stationary sources and motor vehicle registrations are equal to or greater than the fees that would have been collected under a direct implementation of section 185. In the event that the annual equivalency report shows insufficient funds collected (i.e., a shortfall), Rule 3170 requires the collection of

[3] The CAA and EPA's Section 185 baseline guidance (referenced below in this section) allow for alternative baseline periods only if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

[4] This guidance can be found at: *http://www.epa.gov/ttn/oarpg/t1/memoranda/20080321_harnett_emissions_basline.pdf.*

additional funds from stationary sources.

SJVUAPCD has demonstrated that its alternative fee-equivalent program will be at least as stringent as a CAA section 185 fee program. Rule 3170 provides SJVUAPCD the authority to collect fees from certain major sources. To the extent that Rule 3170 differs from CAA section 185 by exempting certain major stationary sources and allowing a different baseline calculation, AB2522 allows SJVUACPD to assess supplemental motor vehicle registration fees equivalent to those that would be collected through a straight section 185 fee program, and requires SJVUAPCD to use those revenues to fund incentive-based programs resulting in NO_X and VOC emissions reductions in the San Joaquin Valley. Although we are not approving AB2522 into the SIP, Rule 3170 provides adequate oversight and enforcement mechanisms through the Annual Fee Equivalency Demonstration Report and the shortfall remedy to assure that SJVUAPCD's fee-equivalent alternative program will be at least as stringent as a section 185 fee program. We therefore conclude that SJVUAPCD's alternative fee-equivalent program is consistent with the principles of CAA section 172(e) and not less stringent than the requirements of CAA section 185 because it will result in collection of fees equal to the fees that would be collected under section 185. Based upon SJVUAPCD's demonstration that its alternative fee-equivalent program is not less stringent than a section 185 program, EPA proposes to approve Rule 3170 into the California SIP on the basis that SJVUAPCD's alternative fee-equivalent program meets the requirements of sections 172(e) and 185 of the Act.

The TSD has more information on our evaluation.

VI. Proposed Action

Because EPA believes SJVUAPCD Rule 3170 fulfills all relevant requirements, we are proposing to approve Rule 3170 as a SIP revision under section 110(k)(3) of the Act. EPA believes that SJVUAPCD's alternative fee-equivalent program is not less stringent than the requirements set forth in section 185 of the Act, therefore we are proposing to approve SJVUAPCD's alternative fee-equivalent program consisting of Rule 3170 and state law authorities as fulfilling the requirements of sections 185 and 172(e) of the Act.

We will accept comments from the public on these proposals for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate Rule 3170 into the federally enforceable SIP. Our final action would address the CAA section 185 requirements for the 1-hour ozone standard and therefore would permanently terminate the sanctions clocks associated with our January 13, 2010 action on the effective date of the final approval.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 19, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–18991 Filed 7–27–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1075]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On October 27, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 74 FR 55168. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Peoria County, Illinois, and Incorporated Areas. Specifically, it addresses the following flooding sources: Dry Run Creek, Illinois River, and Kickapoo Creek.

DATES: Comments are to be submitted on or before October 26, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1075, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency

Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 74 FR 55168, in the October 27, 2009, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Peoria County, Illinois, and Incorporated Areas'' addressed the flooding source Illinois River. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for that flooding source. In addition, it did not include the flooding sources Dry Run Creek and Kickapoo Creek. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Peoria County, Illinois, and Incorporated Areas				
Dry Run Creek	At the downstream side of Swords Avenue	None	+481	City of West Peoria.
	At the upstream side of Park Road	None	+511	
Illinois River	Approximately 0.57 mile upstream of Marsh Road	+455	+454	City of Chillicothe, City of Pekin, City of Peoria, Unincorporated Areas of Peoria County, Village of Bartonville, Village of Kingston Mines, Village of Mapleton.
	Approximately 1,400 feet upstream of Moffitt Street	None	+460	
Kickapoo Creek	Approximately 60 feet downstream of Harmon Highway/State Route 116.	None	+473	City of Peoria, City of West Peoria, Village of Bellevue.
	At the downstream side of Farmington Road	None	+480	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Chillicothe
Maps are available for inspection at 908 North 2nd Street, Chillicothe, IL 61523.
City of Pekin
Maps are available for inspection at City Hall, 111 South Capital Street, Pekin, IL 61554.
City of Peoria
Maps are available for inspection at 419 Fulton Street, Peoria, IL 61602.
City of West Peoria
Maps are available for inspection at 2506 West Rohmann Avenue, West Peoria, IL 61604.
Unincorporated Areas of Peoria County
Maps are available for inspection at the Peoria County Planning and Zoning Department, 324 Main Street, Room 301, Peoria, IL 61602.
Village of Bartonville
Maps are available for inspection at the Village Hall, 5912 South Adams Street, Bartonville, IL 61607.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Village of Bellevue Maps are available for inspection at the Peoria County Planning and Zoning Department, 324 Main Street, Room 301, Peoria, IL 61602.				
Village of Kingston Mines Maps are available for inspection at the Peoria County Planning and Zoning Department, 324 Main Street, Room 301, Peoria, IL 61602.				
Village of Mapleton Maps are available for inspection at the Peoria County Planning and Zoning Department, 324 Main Street, Room 301, Peoria, IL 61602.				

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 8, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–19042 Filed 7–27–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BA97

Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 88

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of availability of fishery management plan amendment; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for review by the Secretary of Commerce (Secretary). If approved, Amendment 88 would establish the Central Gulf of Alaska Rockfish Program (Rockfish Program). This proposed program would allocate exclusive harvest privileges to a select group of License Limitation Program (LLP) license holders who used trawl gear to target Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during specific qualifying years. Amendment 88 would modify the FMP to retain the conservation, management, safety, and economic gains realized under the Rockfish Pilot Program and viability of the Gulf of Alaska fisheries. This action is necessary to replace particular Rockfish Pilot Program regulations that are scheduled to expire at the end of 2011. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments on Amendment 88 must be received on or before September 26, 2011.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by RIN 0648–BA97, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov*.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* 907–586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of Amendment 88 to the FMP, the Regulatory Impact Review, the Initial Regulatory Flexibility Analysis, and the Environmental Assessment, prepared for this action are available from *http://wwww.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, 907–586–7091.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This document announces that proposed Amendment 88 to the FMP is available for public review and comment.

The groundfish fisheries in the exclusive economic zone of Alaska are managed under the GOA FMP and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. These fishery management plans were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act.

Amendment 88 is necessary to replace Central Gulf of Alaska (GOA) Rockfish Pilot Program (Pilot Program) regulations that are scheduled to expire December 31, 2011. The Pilot Program was recommended by the Council in June 2005 as Amendment 68 to the Central GOA FMP. Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199) granted NMFS specific authority to manage Central GOA rockfish fisheries, and directed the

Secretary, in consultation with the Council, to develop a program that recognizes the historical participation of fishing vessels and fish processors in the Central GOA rockfish fishery. Regulations implementing Amendment 68 were published on November 20, 2006 (71 FR 67210), and are located at 50 CFR Part 679. Fishing began under the Pilot Program on May 1, 2007.

The Council designed the Pilot Program to be used as a demonstration program for a long term Central GOA rockfish program. The Rockfish Program proposed in Amendment 88 meets the requirements for limited access privileges in section 303A of the Magnuson-Stevens Act. Amendment 88 would allow for the proposed Rockfish Program to retain the conservation, safety, and economic gains realized under the Pilot Program. It would be similar in the implementation, management, monitoring, and enforcement developed under the Pilot Program. It would also resolve identified issues in the management and viability of the fisheries.

Central GOA Rockfish Program

The Rockfish Program would provide exclusive harvesting privileges for vessels using trawl gear to harvest a specific set of rockfish species and associated species incidentally harvested to those rockfish in the Central GOA, an area from 147° W. long. to 159° W. long. The granting of exclusive harvesting is commonly called rationalization. The rockfish primary species rationalized under the Rockfish Program are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. The incidentally harvested groundfish taken in the primary rockfish fisheries and which also are rationalized under the Rockfish Program are called the secondary species. The secondary species are Pacific cod, rougheye rockfish, shortraker rockfish, and sablefish that are harvested by vessels using trawl gear. In addition to these secondary species, the Rockfish Program would allocate a portion of the halibut bycatch mortality limit annually specified for the GOA trawl fisheries to Rockfish Program participants. This allocation of bycatch mortality could be used by Rockfish Program participants during harvest activities in the fisheries rationalized under the Rockfish Program.

The Rockfish Program would continue to assign quota share (QS) and cooperative quota (CQ) to participants for primary and secondary species, allow a participant holding an LLP license with Rockfish QS to form a rockfish cooperative with other persons, and allow holders of catcher/processor LLP licenses to opt-out of the fishery. The entry level fishery would continue for harvesters who are not eligible for the Rockfish Program and would be directed fishing for rockfish primary species using longline gear only. Additionally, the Rockfish Program continues to establish sideboard limits, as well as monitoring and enforcement provisions.

If approved, the proposed Rockfish Program would be effective from January 1, 2012, through December 31, 2021. The Council reviewed and considered the duration of the permits under section 303A of the Magnuson-Stevens Act. All permits would expire after 10 years but would be renewed unless the Council takes action to discontinue the Rockfish Program. A formal review of the Rockfish Program by the Council would take place 3 years after the implementation of the program to determine if the program is functioning as intended.

Even though the two programs are similar, the proposed Rockfish Program would change some provisions that were implemented under the Pilot Program. In summary, the proposed Rockfish Program would:

- Change the qualifying years for eligibility for QS from 1996 through 2002 under the Pilot Program to 2000 though 2006 under the Rockfish Program;
- Utilize data from the new qualifying years to determine the allocation of QS and sideboard limits;
- Maintain a small portion of the annual allocation of primary rockfish species for persons not receiving QS to fish in an entry level fishery. The Rockfish Program would restrict the entry level fishery to longline gear only and discontinue the entry level trawl fishery; however, the Rockfish Program would allow participants in the Pilot Program entry level trawl fishery to qualify for QS;
- Relax the requirements to form a cooperative so that a person holding QS would not need to form an association with a specific processor and so that a minimum number of QS holders is not required to form a cooperative;
- Modify the required location where harvesters in cooperatives may deliver rockfish. Under the Rockfish Program, cooperatives could only deliver catch to shorebased processors operating within the boundaries of the City of Kodiak—the traditional rockfish delivery port;
- Require that QS holders form a cooperative to be able to fish in the Rockfish Program and discontinue the limited access fishery ''race for fish'' that QS holders could participate in under the Pilot Program;
- Simplify sideboards and add slight modifications to sideboards for catcher processors;
- Implement a cost recovery program;
- Establish a catch monitoring and control plan specialist to monitor deliveries; and
- Be authorized for 10 years, from January 1, 2012, until December 31, 2021.

Proposed Amendment 88 would continue management of Central GOA rockfish through an exclusive harvest privilege. Greater security for harvesters in cooperatives would continue to be realized under the Rockfish Program. Although participants that opt out of participating in cooperatives and participants in the entry level fishery would not receive a guaranteed annual catch amount, most harvesters would participate in a cooperative that receives a CQ allocation. A CQ allocation would continue to provide incentives to focus on quality, promote a slower paced fishery, enhance safety by providing a vessel operator more flexibility to choose when to fish, and provide greater stability for processors by spreading out production over a greater period of time.

Public comments are being solicited on proposed Amendment 88 to the GOA FMP through the end of the comment period (see **DATES**). NMFS intends to publish this action in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 88, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period for Amendment 88 to be considered in the approval/disapproval decision on Amendment 88. All comments received by the end of the comment period on Amendment 88, whether specifically directed to the GOA FMP amendment or the proposed rule will be considered in the FMP approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* and Pub. L. 108–447.

Dated: July 25, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–19125 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BA18

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Limited Access Privilege Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: Amendment 93 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) would amend the Bering Sea and Aleutian Islands Amendment 80 Program to modify the criteria for forming and participating in a harvesting cooperative. This action is necessary to encourage greater participation in harvesting cooperatives, which enable members to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan, and other applicable law.

DATES: Comments on the amendments must be submitted on or before September 26, 2011.

ADDRESSES: Send comments to James W. Balsiger, Ph.D., Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–BA18,'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov*.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 93, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA)—collectively known as the Analysis—for this action are available from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, (907) 586–7091.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The Amendment 80 Program for Bering Sea and Aleutian Islands Management Area (BSAI) groundfish fisheries was recommended by the North Pacific Fishery Management Council (Council) in June 2006 as Amendment 80 to the FMP. NMFS published a final rule to implement Amendment 80 on September 14, 2007 (72 FR 52668), and fishing began under the Amendment 80 Program in 2008.

The Amendment 80 Program is commonly known as a limited access privilege program. Eligible fishery participants may receive exclusive access to specific fishery resources if specific conditions are met. Under the Amendment 80 Program, NMFS issues a quota share (QS) permit to a person holding the catch history of an original qualifying non-American Fisheries Act trawl catcher/processor that met specific criteria designated by Congress under the Capacity Reduction Program (CRP) (Pub. L. 108–447). NMFS determined that 28 vessels met the criteria specified in the CRP. These vessels comprise the originally qualifying Amendment 80 vessels. Each of the 28 originally qualifying Amendment 80 vessels may be issued a QS permit by NMFS based on their catch history of the six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) in the BSAI, if the Amendment 80 vessel owner applies to NMFS to receive a QS permit.

Under the Amendment 80 Program, NMFS allocates a specific portion of the BSAI total allowable catch (TAC) for harvest by QS holders, the Amendment 80 sector, for each of the six defined Amendment 80 species. In addition, NMFS allocates a specific portion of the allowable bycatch of BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab to the Amendment 80 sector. This allowable bycatch is commonly known as prohibited species catch (PSC) because these species may not be retained, but are known to be incidentally taken in BSAI trawl fisheries.

Each year, a person assigns each QS permit, Amendment 80 vessel, and any associated license limitation program (LLP) licenses to either an Amendment 80 cooperative, or the Amendment 80 limited access fishery. Generally, the Amendment 80 Program is intended to facilitate the formation of cooperatives that will receive exclusive harvest privileges for a portion of the Amendment 80 species TAC and PSC known as cooperative quota (CQ). A person who does not choose to join a harvesting cooperative must fish in the Amendment 80 limited access fishery, without an exclusive harvest privilege, and must continue to race for fish with other participants in that fishery.

In order to form a cooperative, the cooperative must apply for a CQ permit by November 1 of the year prior to fishing. The cooperative must be comprised of:

- At least three unique persons not affiliated with one another through direct or indirect ownership of more than 10 percent; and
- At least nine (of the 28 potentially available) QS permits in the Amendment 80 sector must be assigned to the cooperative.

Amendment 93 would result in two modifications to the Amendment 80 Program. First, it would allow a cooperative to form with a minimum of two unique persons holding seven QS permits. The current requirement is that a minimum of three unique persons and nine QS permits must be assigned to a cooperative. Reducing the number of

unique persons and number of QS permits can provide additional opportunities for QS holders to establish cooperative relationships that could reduce the number of participants engaged in the race for fish.

Second, Amendment 93 would require that a person holding multiple QS permits, Amendment 80 vessels, and LLP licenses assign all of those QS permits, vessels, and LLP licenses to either one or more cooperatives or the limited access fishery. Under this proposed change, an Amendment 80 QS permit holder would be prohibited from assigning some QS permits to one or more cooperatives and some to the limited access fishery. Under the current provisions, a vessel owner participating in both a cooperative and the limited access fishery has an incentive to exclude participants in the limited access fishery from joining an existing cooperative or creating an additional cooperative because the vessel owner could lose access to fish that would otherwise be available in the Amendment 80 limited access fishery. This provision would reduce the incentive for a cooperative member to exclude another person from forming a cooperative in order to force them into a race for fish in the limited access fishery. If approved, this provision would not be applicable until the first fishing year 2 years after the effective date of the final rule implementing Amendment 93. For example, if the final rule became effective in October 2011, this requirement would not apply until the start of the 2014 fishing year and QS holders would have to assign all QS permits and vessels to either a cooperative or the limited access fishery by the Amendment 80 annual cooperative application deadline of November 1, 2013.

Public comments are being solicited on proposed Amendment 93 through the end of the comment period (see **DATES**). NMFS intends to publish a proposed rule in the **Federal Register** for public comment that would implement Amendment 93, following NMFS evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the close of the comment period on Amendment 93 to be considered in the approval/disapproval decision on Amendment 93. All comments received by the end of the comment period on Amendment 93, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 93. Comments received after the end of the public comment period for Amendment 93, even if received within the comment period for the proposed rule, will not be considered in the approval/disapproval decision on the Amendment. To be considered, comments must be received by NMFS, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

Dated: July 25, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–19126 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 145
Thursday, July 28, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach; Advisory Committee on Minority Farmers; Notice of Meeting

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Office of Advocacy and Outreach (OAO). Notice of the meetings are provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2). This meeting will be open to the public.

As required by the Federal Advisory Committee Act, as amended, the OAO announces a public meeting of the Advisory Committee on Minority Farmers (Committee) to advise the Secretary of Agriculture on: (1) The implementation of section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, 7 U.S.C. 2279; (2) methods of maximizing the participation of minority farmers and ranchers in Department of Agriculture programs; and (3) civil rights activities within the Department as such activities relate to participants in such programs.

DATES: The meeting will be held on August 11, 2011, and August 12, 2011, from 8 a.m. to 5 p.m. and 8 a.m. to 12 p.m., respectively. The meeting will be open to the public for public comment on August 11, 2011, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza, 300 North Second Street, Memphis, TN 38105. The hotel's telephone number is 901 525–1800. Written comments may be submitted to: Henry Searcy, Jr., Designated Federal Officer, OAO, 1400 Independence Ave., SW., Whitten Bldg., 520–A, Washington, DC 20250, 202–692–4119.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Phyllis Morgan, Executive Assistant, OAO, 1400 Independence Ave., SW., Whitten Bldg., 520–A, Washington, DC 20250, 202–692–4119, *Fax:* 202–720–7136 *e-mail: Phyllis.Morgan@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to section 14008 of the Food Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2208. The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing solutions to the challenges of the aforementioned agenda topics (1), (2) and (3). Equal opportunity practices were considered in all appointments to the Committee in accordance with USDA policies. The Secretary selected the members in January 2011.

On August 11, 2011, from 9 a.m. to 12 p.m., there will be an opportunity for public comments. Interested persons may present views, orally or in writing, on issues relating to the above agenda topics (1), (2) and (3) before the committee. Written submissions may be submitted to the contact person on or before August 1, 2011. Oral presentations from the public will be scheduled between approximately 9 a.m. to 12 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the issue they wish to present and the names and addresses of proposed participants. (All oral presentations will be given three minutes. If the number of registrants requesting to speak is greater than what can be reasonably accommodated during the scheduled open public hearing session timeframe, OAO may conduct a lottery to determine the speakers for the scheduled open public hearing session.) The contact person will notify interested persons regarding their request to speak by August 5, 2011.

OAO will make all agenda topics available to the public via the OAO Web site (*http://www.outreach.usda.gov/oasdfr*) no later than 10 business days before the meeting and at the meeting. OAO welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Phyllis Morgan at least 7 days in advance of the meeting. OAO is committed to the orderly conduct of the advisory committee meeting. Please visit our Web site at *http://www.outreach.usda.gov/oasdfr* for procedures on public conduct during the advisory committee meeting.

Walt Douglas,

Director, Office of Advocacy and Outreach.

[FR Doc. 2011–19172 Filed 7–27–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Funding Availability: Inviting Applications for the Food for Progress Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.606.

SUMMARY: The Foreign Agricultural Service (FAS) announces it is inviting proposals for the Food for Progress (FFPr) program. The total resources available are estimated at about $160 million. The FFPr Program is administered by FAS.

DATES: All applications must be received by 5 p.m. Eastern Standard Time October 26, 2011. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1250 Maryland Avenue, Suite 400, SW., Washington, DC 20024; or by *phone:* (202) 720–4221; or by *fax:* (202) 690–0251; or by e-mail at *ppded@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

A. *Authority:* The FFPr program is authorized by the Food for Progress Act of 1985, as amended.

B. *Purpose:* The FFPr program provides for the donation of U.S. agricultural commodities to developing countries and countries that are emerging democracies that have made commitments to introduce or expand free enterprise in their agricultural economies. Donated commodities are typically ''monetized'' (or sold on the local market), and the proceeds are used

to fund agricultural development activities.

C. *Objectives:* For this notice, FAS is concentrating FFPr resources toward achieving two high-level objectives: (1) Increase agricultural productivity and (2) expand trade of agricultural products (domestically, regionally, and internationally). For more information on the two objectives, please see Section V of this notice.

D. *Priorities:* FAS will give priority consideration to otherwise acceptable applications that support results for priority countries, regions, and objectives sectors listed at: *http://www.fas.usda.gov/excredits/FoodAid/FFP/FFPrPriorities.asp.*

II. Award Information

A. *Award Size:* Grants provided under the FFPr program normally range from $5–$15 million.

B. *Type of Award:* All awards will be made in the form of competitive grants.

III. Eligibility Information

For eligibility requirements, see the FFPr program regulations (7 CFR 1499.3).

IV. Application and Submission Information

A. *Application Content:* An applicant for funding under FFPr shall submit an application that contains the information specified in 7 CFR 1499.4 which includes a completed form SF–424, an Introductory Statement, a Plan of Operation, and a proposed budget. Guidance on preparing the Introductory Statement, Plan of Operation, and a budget can be found in the proposal entry module of the Food Aid Information System (FAIS) at the following address: *http://www.fas.usda.gov/fais/public.* Additionally, the application shall include a plan to monitor the implementation of all program activities, a Performance Monitoring Plan, and a plan to evaluate all activities and report to FAS on the impact, in accordance with the policy found at: *http://www.fas.usda.gov/excredits/FoodAid/FFP/MEPolicy.asp.*

B. *Method of Submission:* The entire application package must be submitted electronically to FAS's online proposal entry system, the FAIS, located at *http://www.fas.usda.gov/fais/public.*

C. *Deadline for Submission:* All applications must be received by 5 p.m. Eastern Standard Time, October 26, 2011. Applications received after this date will not be considered.

D. *Frequently Asked Questions:* Please see the FAS Web site for frequently asked questions on applying for the Food for Progress program, available at: *http://www.fas.usda.gov/excredits/FoodAid/FFP/ApplicationFAQs.asp.*

V. Selecting Project Objectives and Results

A. *Results Frameworks:* In an effort to use scarce resources more strategically, FAS has developed two results frameworks for the FFPr program. The two frameworks correspond to the FFPr program's two high-level objectives: (1) Increase agricultural productivity and (2) expand trade of agricultural products (domestically, regionally, and internationally). Applications that do not contribute to one of these two high-level objectives will not be funded. The results frameworks are available on the FAS Web site at: *http://www.fas.usda.gov/excredits/FoodAid/FFP/ResultsFrameworks.pdf.*

B. *Incorporating Results Into Applications:* Applicants must submit an illustration(s) of a framework(s) that shows the intended results for the proposed project. The project framework(s) submitted by the applicant must be consistent with the program-level frameworks that FAS has developed. However, applicants can add or subtract results from/to the frameworks as appropriate but cannot modify any of the remaining results. Within the Introductory Statement, applicants must also provide an assessment of how the proposed project will contribute to the high-level objective(s) of the FFPr program frameworks. The assessment should focus on the country specific context for the project including key problems or barriers that limit an applicant's ability in achieving the high-level objective addressed. The assessment should provide to USDA an understanding of why the application will include results for specific portions of the frameworks and exclude results from others. The assessment will allow USDA to follow the contributions of the application in the frameworks and to make sure the application addresses key problems, barriers, or weaknesses in the country. Applicants should also list strengths in the countries or investments by other donors that explain the rationale for excluding results.

C. *Additional Information:* For specific guidance on how to incorporate the frameworks into a proposal and for a list of performance management indicators, please see our application guidance at: *http://www.fas.usda.gov/excredits/FoodAid/FFP/FrameworkGuidance.asp.*

VI. Proposal Review Criteria

A. *Review Process:* FAS will review all responsive proposals that are submitted by the deadline. FAS will invite comments from other U.S. Government agencies (USG) on its award recommendations, but FAS will make the final determination about which proposals to fund.

B. *Criteria:* FAS will review and evaluate each proposal using the following criteria:

1. Project Design and Alignment with the Solicitation (18 percent)

(a) Does the project design incorporate the solicitation's priority countries, geographic regions, and objectives?

(b) Does the application explain the need for the proposed activities?

(c) Are objectives and activities clearly defined, achievable?

(d) Does the application clearly explain how the applicant will implement the project?

(e) Does the application explain how the applicant will use its resources to assure that program objectives are met?

(f) Is the plan of operation cost-effective, given the proposed objectives and activities?

2. Indicators for Proposed Activities and FFPr Results (23 percent)

(a) Are the proposed results achievable, realistic, and meaningful?

(b) Does the application provide an illustration of the results framework for the application?

(c) Does the application include an assessment that addresses the need for specific results and the reasoning for including or excluding portions of the program frameworks?

(d) Does the application contain an estimated number of beneficiaries?

(e) Is the number of beneficiaries realistic for the proposed activities?

(f) Are the beneficiaries and criteria for selection explicit?

(g) Does the application incorporate results and corresponding indicators from the FFPr results frameworks?

(h) Does the application explain how the proposed activities directly contribute to the selected results from the FFPr results frameworks?

(i) Does the application present a comprehensive plan to monitor proposed activities and performance indicators?

(j) Does the application present a comprehensive plan to evaluate the proposed program and its impact?

3. Overall Application Quality (9 percent)

(a) Is each necessary section in the application completed?

(b) Is each section of the application consistent with the other sections?

(c) Is the application clearly written?

4. Commodity Management and Appropriateness (14 percent)

(a) Does the application demonstrate that the commodity type and tonnage are appropriate for the market and will not disrupt commercial sales?

(b) Does the applicant have a clear plan to monetize or distribute the commodity?

(c) Does participant have monetization experience or plans to hire an experienced agent?

(d) Does the application address specific country concerns, including customs exemptions, import barriers, tariffs, etc.?

(e) Does the application include port, warehouse, and handling capacity in country as it relates to the commodity, tonnage, and packaging?

5. Organizational Capability and Experience (18 percent)

(a) Does the application establish the organization's project management capability, including its ability to implement, supervise, and support projects?

(b) Does the applicant have sufficient financial management capability to implement the proposed program?

(c) Does the applicant have past experience or expertise in the program objectives and/or activities proposed?

(d) If the applicant has had programs with USDA or USAID, was this a productive collaboration with positive outcomes?

(e) Is applicant registered in country or does it offer a plan to become registered?

(f) Does the organization have experience working in the country of the proposed program?

6. In-Country Coordination (9 percent)

(a) Does the organization have a working relationship with and support from the recipient government?

(b) Did the organization work with the recipient government to develop the proposed activities?

(c) Does the application explicitly describe its coordination with published USG and host government development strategies?

(d) Does the application describe what other stakeholders (host government, USG, other donors, private sector, etc.) are already doing to address agricultural development, and explain how the proposed program will complement these activities?

(e) Does the proposed program have private and public sector support?

(f) Does the proposed program have established partnerships with and buy-in from beneficiary groups/communities?

7. Sustainability Plan/Objectives (9 percent)

(a) Does the applicant provide a satisfactory plan for continuation of projects beyond Food for Progress support? If the project is not sustainable, is there an explanation?

(b) Does the organization have a plan for securing local support (public, private, other) to maintain programming after the grant's completion?

(c) For an organization that has received previous FFPr grants, does the proposal reference sustainable activities launched under earlier agreements?

8. The following factors will reduce a proposal's score because they reflect negatively on an organization's ability to successfully implement and complete a grant agreement with USDA.

(a) FAS has terminated an agreement with the organization for violations within the last 3 years.

(b) The organization owes USDA a debt that is not covered by a payment plan or other method of resolution.

(c) The organization has submitted late or has not submitted at all two or more required reports in the last three years.

(d) The organization has not responded to FAS's deadlines for documents required to close an agreement on two or more occasions within the last 3 years.

VII. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final decision regarding its application. FAS will send a letter to each approved applicant that will specify the amount of funding. Once the approved applicant receives this letter, FAS will begin negotiations with the applicant to develop a grant agreement. The agreement will incorporate the details of the project as approved by FAS and in accordance with the FFPr program regulations, 7 CFR part 1499.

2. *Reporting:* An organization receiving funding under the FFPr program will be required to provide quarterly financial reports, semi-annual logistics and monitoring reports, a baseline study, a mid-term evaluation, and a final evaluation report, as provided in the grant agreement. All reports must be submitted using the FAIS. All organizations receiving funding will be required to report against the indicators in the agreement at each reporting cycle. Changes in the original project timelines and adjustments within project budgets must be approved by FAS prior to their implementation.

3. *Monitoring and Evaluation:* A program participant shall submit to FAS, in the manner specified in the agreement, an annual financial audit in accordance with 7 CFR § 1599.13(d). If FAS requires an annual financial audit with respect to a particular agreement, and FAS provides funds for this purpose, the participant shall arrange for such audit and submit it to FAS, in the manner specified in the agreement. The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

Signed at Washington, DC, on July 15, 2011.

Suzanne E. Heinen,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2011–19141 Filed 7–27–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Funding Availability: Inviting Applications for McGovern-Dole International Food for Education and Child Nutrition Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.608.

SUMMARY: The Foreign Agricultural Service (FAS) announces it is inviting applications for the McGovern-Dole International Food for Education and Child Nutrition program (McGovern-Dole). Total resources are expected to be about $190 million, but are contingent on final FY 2012 appropriations action. Eligible applicants may submit applications through October 26, 2011. The McGovern-Dole program is administered by FAS.

DATES: All applications must be received by 5 p.m. Eastern Standard Time, October 26, 2011. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1250 Maryland Avenue, Suite 400, SW., Washington, DC 20024; *by phone:* (202) 720–4221; *by fax:* (202) 690–0251; or *by e-mail at: ppded@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

A. *Authority:* The McGovern-Dole program is authorized by the Farm Security and Rural Investment Act of 2002, as amended.

B. *Purpose:* The McGovern-Dole program promotes education, child development, and food security for poor

children in low-income countries through the donation of U.S. agricultural commodities as well as the provision of financial and technical assistance. The commodities are made available for donation through agreements with Private Voluntary Organizations (PVOs), cooperatives, intergovernmental organizations, and foreign governments. Financial assistance is also provided for administrative and activity costs associated with achieving the objectives of the program.

C. *Objectives:* For this notice, FAS is concentrating McGovern-Dole program resources toward achieving two objectives: (1) Improve the literacy of school age children and (2) sustaining the benefits made during project implementation to literacy, attendance, and enrollment by graduating the project to the host country. For more information on the objectives, please see Section V of this notice.

D. *Priorities:* FAS will give priority consideration to otherwise acceptable applications that support results for priority countries and regions listed at: *http://www.fas.usda.gov/excredits/FoodAid/FFE/FFEPriorities.asp.* FAS will also give priority to requests to continue existing McGovern-Dole projects for non-priority countries and non-priority regions. Applications to continue existing projects must meet all of the criteria described in this notice including incorporation of program objectives.

II. Award Information

A. *Award Size:* Grants provided under the McGovern-Dole program normally range from $3-$10 million per year.

B. *Type of Award:* All awards will be made in the form of competitive grants.

III. Eligibility Information

For eligibility requirements, see the McGovern-Dole program regulations (7 CFR 1599.3).

IV. Application and Submission Information

A. *Application Content:* An applicant for funding under the McGovern-Dole program shall submit an application that contains the information specified in 7 CFR 1599.4, which includes a completed form SF–424, an Introductory Statement, a Plan of Operation, and a proposed budget. Guidance on preparing the Introductory Statement, a Plan of Operation, and a budget can be found in the proposal entry module of the Food Aid Information System (FAIS) at the following address at: *http://www.fas.usda.gov/fais/public.* Additionally, the application shall include a plan to monitor the implementation of all program activities, a Performance Monitoring Plan, and a plan to evaluate all activities and report to FAS on the impact, in accordance with the policy found at: *http://www.fas.usda.gov/excredits/FoodAid/FFE/EvaluationPolicy.asp.*

B. *Method of Submission:* The entire application package must be submitted electronically to FAS's online proposal entry system, the FAIS, located at: *http://www.fas.usda.gov/fais/public.*

C. *Deadline for Submission:* All applications must be received by 5 p.m. Eastern Standard Time, October 26, 2011. Applications received after this date will not be considered.

V. Selecting Project Objectives and Results

A. *Results Frameworks:* In an effort to use scarce resources more strategically, FAS has developed results frameworks for the McGovern-Dole program. This framework corresponds to the highest-level objective that the McGovern-Dole program strives to achieve: improve the literacy of school age children. Applications that do not contribute to this highest-level result will not be funded. However, FAS considers sustaining the benefits made to literacy, attendance, and enrollment of equal importance. Therefore all applications must include a plan to graduate project activities to the host country that consists of specific activities linked to specific results in the framework and timelines for achieving them. A matrix of possible activities that support sustainability as well as the results framework are available on the FAS Web site at: *http://www.fas.usda.gov/excredits/FoodAid/FFE/ResultsFrameworks.pdf.*

B. *Incorporating Results Into Proposals:* Applicants must submit an illustration of a framework that shows the intended results for the proposed project. The project framework submitted by the applicant must be consistent with the program-level framework that FAS has developed. However, applicants can add results to or subtract results from the framework as appropriate but cannot modify any of the remaining results. Within the Introductory Statement, applicants must also provide an assessment of how the proposed project will contribute to the high-level objective of the McGovern-Dole program framework as well as how graduation will be achieved. The assessment should focus on the country specific context for the project including key problems or barriers that limit an applicant's ability in achieving the high-level objective. The assessment should provide to USDA an understanding of why the application will include results for specific portions of the frameworks and exclude results from others. The assessment will allow USDA to follow the contributions of the application in the framework and to make sure the application addresses key problems, barriers, or weaknesses in the country. Applicants should also list strengths in the countries or investments by other donors that explain the rationale for excluding results.

C. *Additional Information:* For specific guidance on how to incorporate the frameworks into an application as well as a list of performance management indicators, both required and optional, please see our application guidance at: *http://www.fas.usda.gov/excredits/FoodAid/FFE/FrameworkGuidance.asp.*

VI. Application Review Criteria

A. *Review Process:* FAS will review all responsive applications that are submitted by the deadline. FAS will invite comments from other U.S. governmental agencies on its award recommendations, but FAS will make the final determination about which applications to fund.

B. *Criteria:* FAS will review and evaluate each application using the following criteria:

1. Program Design and Alignment with the Solicitation (15 percent) including:

(a) Clearly defined objective and activities that are logically tied to the results to be achieved;

(b) Alignment with the McGovern-Dole results framework;

(c) The quality of the project's performance measures, and the degree to which they relate to the objective, deliverables, and proposed approach and activities;

(d) Detailed understanding of the need for the project;

(e) Clearly described project design and explanation of how the applicant will implement the project;

2. In-country coordination (10 percent) including:

(a) An established relationship with the recipient government;

(b) Description of how the applicant will work with the recipient government to implement the project;

(c) Description of what other stakeholders, including other USG agencies (USAID, State, *etc.*), are doing to address poverty, hunger and deficient primary education in the recipient country, what needs remain, and how the proposed program complements and does not duplicate those activities;

(d) A demonstration that the proposed activities fit into the host government's national food security plans and any education and nutrition plans; and

(e) Demonstrated cooperation with other USG agencies doing development work.

3. Commodity and Funds Appropriateness and Management (5 percent) including:

(a) Commodity type and tonnages are clearly described;

(b) Storage and handling procedures for the commodity are described;

(c) Specific country concerns such as customs exemptions, tariffs, or other barriers are addressed; and

(d) A clear description of how the funds provided by FAS will be used and how they will complement the commodities requested.

4. Organizational Capability and Experience (10 percent) including:

(a) A description of the organization's past experience working on school feeding, education, and other development projects;

(b) Description of the organization's financial management capability;

(c) Description of the organization's project management capability;

(d) Description of past programs with USDA, USAID, or other USG agency;

(e) Experience working in the country of the proposed project; and

(f) Registration in country or a plan to become registered.

5. Sustainability and Graduation (20 percent) including:

(a) A detailed plan for graduating the project including methods and timelines that are realistic and incorporated into the McGovern-Dole project framework;

(b) A description of the recipient government's financial or in-kind support of the proposed activities will help continue the project beyond the years of the proposal; and

(c) A description of the local community's support for the project and willingness to sustain it.

6. Literacy (20 percent) including:

(a) A description of the activities to be undertaken and how they support the results cited;

(b) Realistic and achievable outputs for the activities described;

(c) Realistic, achievable, and meaningful outcomes relevant to the outputs of all activities;

(d) A description of how the required indicators will be incorporated; and

(e) A full description of all beneficiaries.

7. Program Monitoring and Evaluation (10 percent) including:

(a) Well developed, recent, and clear baselines and target goals;

(b) Clearly described monitoring and evaluation plan sufficient to provide FAS with a full accounting of all activities and indicators; and

(c) Qualified monitoring team.

8. Application Quality (5 percent) including:

(a) Application is complete with all necessary sections;

(b) Application is consistent; and

(c) Application is clear.

9. The following factors will reduce FAS's evaluation of the application because they negatively reflect on an organization's ability to successfully implement and complete a grant agreement with USDA.

(a) FAS has terminated an agreement with the organization for violations within the last three years.

(b) The organization owes USDA a debt that is not covered by a payment plan or other method of resolution.

(c) The organization has submitted late or has not submitted at all two or more required reports in the last three years.

(d) The organization has not responded to FAS's deadlines for documents required to closeout an agreement on two or more occasions within the last three years.

VII. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of its application. FAS will send a letter to each approved applicant that will specify the amount of funding. Once the approved applicant receives this letter, FAS will begin negotiations with the applicant to develop a grant agreement. The agreement will incorporate the details of the project as approved by FAS and in accordance with the McGovern-Dole program regulations, 7 CFR part 1599.

2. *Reporting:* An organization receiving funding under the McGovern-Dole program will be required to provide quarterly financial reports, semi-annual logistics and monitoring reports, project status reports, a baseline study, a mid-term evaluation, and a final evaluation report, as provided in the grant agreement. All reports must be submitted using the FAIS. All organizations receiving funding will be required to report against the indicators in the agreement at each reporting cycle. Changes in the original project timelines and adjustments within project budgets must be approved by FAS prior to their implementation.

3. *Monitoring and Evaluation:* A program participant shall submit to FAS, in the manner specified in the agreement, an annual financial audit in accordance with 7 CFR 1599.13(d). If FAS requires an annual financial audit with respect to a particular agreement, and FAS provides funds for this purpose, the participant shall arrange for such audit and submit it to FAS, in the manner specified in the agreement. The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

Signed at Washington, DC, on July 20, 2011.

Suzanne E. Heinen,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2011–19135 Filed 7–27–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved information collection, Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record.

DATES: Comments must be received in writing on or before September 26, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA Forest Service, Assistant Director Aviation, Fire and Aviation Management, 1400 Independence Avenue, SW., Mailstop 1107, Washington, DC 20250–1107.

Comments also may be submitted via facsimile to 202–205–1401, phone 202–205–1483 or by e-mail to: *awhinaman@fs.fed.us.*

The public may inspect comments received at USDA Forest Service, Fire and Aviation Management, 1400 Independence Avenue, SW., Washington, DC 20250, during normal business hours. Visitors are encouraged to call ahead to 202–205–1483 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Art Hinaman, Assistant Director Aviation, 202–205–1483. Individuals who use telecommunication devices for the deaf

(TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Airplane Pilot Qualifications and Approval Record, Helicopter Pilot. Qualifications and Approval Record, Airplane Data Record and Helicopter Data Record.

OMB Number: 0596–0015.

Expiration Date of Approval: 12/31/2011.

Type of Request: Renewal with Revision.

Abstract: The Forest Service contracts with approximately 400 vendors a year for commercial aviation services utilized in resource protection and project management. In recent years, the total annual use of contract aircraft and pilots has exceeded 80,000 hours. In order to maintain an acceptable level of safety, preparedness, and cost-effectiveness in aviation operations, Forest Service contracts include rigorous qualifications for pilots and specific condition, equipment, and performance requirements for aircraft as aviation operations are conducted under extremely adverse conditions of weather, terrain, turbulence, smoke reduced visibility, minimally improved landing areas, and congested airspace around wildfires. To ensure agency contracting officers that pilots and aircraft used for aviation operations meet specific Forest Service qualifications and requirements for aviation operations, prospective contract pilots fill out one of the following Forest Service forms:

- FS–5700–20—Airplane Pilot Qualifications and Approval Record.
- FS–5700–20a—Helicopter Pilot Qualifications and Approval Record.

Contract Officers' Technical Representatives use forms:

- FS–5700–21—Airplane Data Record.
- FS–5700–21a—Helicopter Data Record.

When inspecting the aircraft for contract compliance. Based upon the approval(s) documented on the form(s), each contractor pilot and aircraft receives an approval card. The Forest Service personnel verify possession of properly approved cards before using contracted pilots and aircraft.

Information collected on these forms includes:

- Name.
- Address.
- Certification numbers.
- Employment history.
- Medical Certification.
- Airplane/helicopter certifications and specifications.
- Accident/violation history.

Without the collected information, Forest Service contracting officers, as well as Forest Service pilot and aircraft inspections, cannot determine if contracted pilots and aircraft meet the detailed qualification, equipment, and condition requirements essential to safe and effective accomplishment of Forest Service specified flying missions.

Without a reasonable basis to determine pilot qualifications and aircraft capability, Forest Service employees would be exposed to hazardous conditions. The data collected documents the approval of contract pilots and aircraft for specific Forest Service aviation missions. Information will be collected and reviewed by contracting officers or their designated representatives, including aircraft inspectors, to determine whether the aircraft and/or pilot(s) meet all contract specifications in accordance with FS Handbook 5709.16, chapter 10, sections 15 and 16. Forest Service pilot and aircraft inspectors maintain the collected information in Forest Service regional offices. The Forest Service, at times, shares the information with the Department of the Interior, Aviation Management Directorate, as each organization accepts contract inspections conducted by the other.

Estimate of Annual Burden: 60 minutes.

Type of Respondents: Vendors/Contractors.

Estimated Annual Number of Respondents: 2100.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2100 hours.

Comment Is Invited. Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: July 22, 2011.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2011–19047 Filed 7–27–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lynn Canal/Icy Straits Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lynn Canal/Icy Straits Resource Advisory Committee will meet in Juneau, Alaska, August 12–13, 2011. The purpose of the meeting is to review, discuss, evaluate, prioritize and recommend projects for approval by the Forest Supervisor.

DATES: The meeting will be held Friday, August 12, 2011 from 8:30–4:30 and Saturday, August 13, 2011 from 9–3 unless additional time is necessary.

ADDRESSES: The meeting will be held at the Juneau Ranger District/Admiralty National Monument Office, 8510 Mendenhall Loop Road, Juneau, Alaska. Send written comments to Lynn Canal/Icy Straits Resource Advisory Committee, c/o Admiralty National Monument Ranger, 8510 Mendenhall Loop Road, Juneau, Alaska 99801, or electronically to Debra Robinson, RAC Coordinator at *drobinson03@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Debra Robinson, RAC Coordinator Juneau Ranger District/Admiralty National Monument, Tongass National Forest, (907) 789–6209.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 21, 2011.

Barbara J. Sams,

Acting Admiralty National Monument Ranger.

[FR Doc. 2011–19063 Filed 7–27–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Allegheny Resource Advisory Committee will meet in Clarendon, Pennsylvania. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review projects proposals submitted for funding consideration for completeness in preparation for the upcoming decision-making process.

DATES: The meeting will be held August 10, 2011, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Mead Township Building located on Mead Blvd., in Clarendon, Pennsylvania. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 4 Farm Colony Drive, Warren, Pennsylvania 16365. Please call ahead to Kathy Mohney at (814) 728–6298 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kathy Mohney, RAC Coordinator, Allegheny National Forest Supervisor's Office, 4 Farm Colony Drive, Warren, Pennsylvania 16365, phone (814) 728–6298 or e-mail *kmohney@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed in **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review and familiarize committee members with the process for preparing and submitting proposals for funding consideration.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 8, 2011, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 4 Farm Colony Drive, Warren, Pennsylvania 16365, or by e-mail to *kmohney@fs.fed.us,* or via facsimile to (814) 726–1462.

Dated: July 22, 2011.

James A. Seyler,

Acting Forest Supervisor.

[FR Doc. 2011–19095 Filed 7–27–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department received requests to revoke two antidumping duty orders in part and to defer the initiation of an administrative review for two antidumping duty orders.

DATES: *Effective Date:* July 28, 2011.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Polyethylene Terephthalate Film, Sheet, and Strip from South Korea for one exporter and on Folding Metal Tables and Chairs from the People's Republic of China for one exporter. In addition, the Department received requests to defer for one year the initiation of the June 1, 2010, through May 31, 2011, administrative reviews of the antidumping duty orders on Certain Polyester Staple Fiber from the People's Republic of China with respect to two exporters and on Folding Metal Tables and Chairs from the People's Republic of China with respect to one exporter in accordance with 19 CFR 351.213(c). The Department received no objections to these requests from any party cited in 19 CFR 351.213(c)(1)(ii).

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this

Federal Register notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) Identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rate criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status *unless* they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2012. Also in accordance with 19 CFR 351.213(c), we are deferring for one year the initiation of June 1, 2010, through May 31, 2011, administrative reviews of the antidumping duty orders on Certain Polyester Staple Fiber from the People's Republic of China with respect to two exporters and on Folding Metal Tables

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

and Chairs from the People's Republic of China with respect to one exporter.

	Period to be reviewed
Antidumping Duty Proceedings	
Japan: Certain Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe, A–588–850	6/1/10–5/31/11
JFE Steel Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
South Korea: Polyethylene Terephthalate Film, Sheet, and Strip, A–580–807	6/1/10–5/31/11
Kolon Industries, Inc.	
The People's Republic of China: Certain Chlorinated Isocyanurates,[3] A–570–898	6/1/10–5/31/11
Hebei Jiheng Chemical Co., Ltd.	
Juancheng Kangtai Chemical Co. Ltd.	
Nanning Chemical Industry Co., Ltd.	
Zhucheng Taisheng Chemical Co., Ltd.	
The People's Republic of China: Certain Polyester Staple Fiber,[4] A–570–905	6/1/10–5/31/11
Far Eastern Industries, Ltd., (Shanghai) and Far Eastern Polychem Industries	
Cixi Jiangnan Chemical Co., Ltd.	
Cixi Sansheng Chemical Fiber Co., Ltd.	
Zhejiang Waysun Chemical Fiber Co., Ltd., and its affiliate, Cixi Waysun Chemical Fiber Co., Ltd.	
Hangzhou Sanxin Paper Co., Ltd.	
Nantong Luolai Chemical Fiber Co., Ltd.	
Nan Yang Textiles Co., Ltd.	
Zhaoqing Tifo New Fiber Co., Ltd.	
Huvis Sichuan Chemical Fiber Corp., and Huvis Sichuan Polyester Fiber Ltd.	
The People's Republic of China: Folding Metal Tables and Chairs,[5] A–570–868	6/1/10–5/31/11
Feili Furniture Development Limited Quanzhou City	
Feili Group (Fujian) Co., Ltd.	
The People's Republic of China: Silicon Metal,[6] A–570–806	6/1/10–5/31/11
Shanghai Jinneng International Trade Co., Ltd.	
The People's Republic of China: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished,[7] A–570–601	6/1/10–5/31/11
Zhejiang Sihe Machine Co., Ltd	
Xinchang Kaiyuan Automotive Bearing Co., Ltd.	
Changshan Peer Bearing Co., Ltd.	
Tianshui Hailin Import and Export Corporation	
Zhejiang ZhaoFeng Mechanical and Electronic Co., Ltd.	
Haining Automann Parts Co., Ltd.	
Xiang Yang Automobile Bearing Co., Ltd.	
Countervailing Duty Proceeding	
None.	
Suspension Agreements	
None.	
Deferral of Initiation of Administrative Reviews	
The People's Republic of China:	
Certain Polyester Staple Fiber, A–570–905	6/1/10–5/31/11
Cixi Santai Chemical Fiber Co., Ltd.	
Ningbo Dafa Chemical Fiber Co., Ltd	
The People's Republic of China: Folding Metal Tables and Chairs, A–570–868	6/1/10–5/31/11
New-Tec Integration (Xiamen) Co., Ltd.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice ofinitiation of the review, will determine, consistent with *FAG Italia S.p.A.* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such

[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Chlorinated Isocyanurates from the People's Republic of China (''PRC'') who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Polyester Staple Fiber from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Folding Metal Tables and Chairs from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If the above-named company does not qualify for a separate rate, all other exporters of Silicon Metal from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above-named companies does not qualify for a separate rate, all other exporters of Tapered Roller Bearings and Part Thereof, Finished and Unfinished from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: July 22, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–19136 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Final Results of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 28, 2011.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, Milton Koch, and Justin Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5255, (202) 482–2584, and (202) 482–0486, respectively.

Background

On May 3, 2011, the Department of Commerce (the Department) issued the preliminary intent to rescind the new shipper reviews of fresh garlic from the People's Republic of China for Jining Yifa Garlic Produce Co., Ltd. and Shenzhen Bainong Co., Ltd. for the period of review (POR) November 1, 2009, through April 30, 2010, and Yantai Jinyan Trading Inc. for the POR November 1, 2009, through May 31, 2010.

See Fresh Garlic From the People's Republic of China: Preliminary Intent To Rescind New Shipper Reviews, 76 FR 24857 (May 3, 2011) (*Preliminary Intent to Rescind*).

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1), provide that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that a new shipper review is extraordinarily complicated, the Department may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days. *See* 19 CFR 351.214(i)(2).

Extension of Time Limit for Final Results

The Department determines that these new shipper reviews involve extraordinarily complicated issues. In particular, since the *Preliminary Intent to Rescind,* the Department has solicited and received additional information regarding the *bona fides* of the new shippers' sales. The Department needs additional time to analyze this new information and to consider the parties' arguments with regard to the *bona fides* of the sales under review. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the final results from 90 days to 111 days. Thus, the final results will now be due no later than August 15, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i)(I) of the Act.

Dated: July 22, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–19134 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA603

Endangered Species; File No. 15802

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Florida Fish and Wildlife Conservation Commission, 100 Eighth Avenue, SE, St. Petersburg, FL 33701 [Gregg Poulakis, Responsible Party], has applied in due form for a permit to take smalltooth sawfish and listed sea turtle species for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 29, 2011.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15802 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to monitor smalltooth sawfish (*Pristis pectinata*) populations of Florida, primarily in the greater Charlotte Harbor estuarine system. Annually, up to 125 sawfish would be captured by gillnet, seine, or longline, handled, measured, passive integrated transponder, roto, and external satellite tagged, tissue and biopsy sampled, examined by ultrasound, and released. Dead sawfish acquired through strandings or from law enforcement confiscations would be sampled for scientific purposes. The applicant also seeks authorization to capture green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and loggerhead (*Caretta caretta*) sea turtles. Sea turtles would be measured, photographed, and released. The permit is requested for a duration of 5 years.

Dated: July 22, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–19122 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA607

Fisheries of the Caribbean; Southeastern Data, Assessment, and Review (SEDAR); Assessment Webinars for SEDAR 26 Caribbean Silk Snapper, Queen Snapper, and Redtail Parrotfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 26 Caribbean silk snapper, queen snapper, and redtail parrotfish assessment webinars.

SUMMARY: The SEDAR 26 assessments of the Caribbean stocks of silk snapper, queen snapper, and redtail parrotfish will consist of a series of workshops and webinars: a Data Workshop, an Assessment workshop, a series of Assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 26 Assessment webinars will be held on Thursday, August 25, 2011 from 1 p.m. to 4 p.m. (EST) and Tuesday, September 20, 2011 from 1 p.m. to 4 p.m. (EST). The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer at SEDAR (See **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366; *e-mail: Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing a workshop and webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 26 Assessment webinars:

Using datasets recommended from the Data Workshop, participants will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Meeting Schedule

August 25, 2011 from 1 p.m. to 4 p.m. (EST)

September 20. 2011 from 1 p.m. to 4 p.m. (EST)

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 5 business days prior to the meetings.

Dated: July 25, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–19112 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XA604

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Visioning Committee and its Executive Committee will hold public meetings.

DATES: The meetings will be held Tuesday, August 16 through Thursday, August 18, 2011. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Suites, 422 Delaware Ave., Wilmington, DE 19801; *telephone:* (302) 654–8300.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901–3910; *telephone:* (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council; *telephone:* (302) 674–2331 ext. 255.

SUPPLEMENTARY INFORMATION: On Tuesday, August 16, the Visioning Committee will meet from 9 a.m. until 5 p.m. There will be a Public Listening Session from 5 until 6:30 p.m. On Wednesday, August 17, the Executive Committee will meet from 8 until 9 a.m. The Council will convene at 9 a.m. Swearing in of new and reappointed Council members and election of Council Officers will be from 9 until 9:15 a.m. From 9:15 a.m. until 4 p.m., the Council will finalize scup, black sea bass, summer flounder, and bluefish management measures for 2012 in conjunction with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, Black Sea Bass, and Bluefish Boards. From 4 until 5 p.m., Research Set Aside priorities will be discussed for 2013. On Thursday August 18, the Council will convene at 8:30 a.m. From 8:30 a.m. until 1 p.m., the Council will conduct its regular Business Session, receive Council Liaison Reports, Monkfish Amendment 6 Overview, Organizational Reports, Executive Director's Report, Science Report, Committee Reports, and any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are: On Tuesday, August 16, the Visioning Committee will discuss an overview of the Visioning project and the expected outcomes, an update on the Communications and Data Gathering Plans, data gathering logistics, maximizing stakeholder participation, review of survey instrument, and discuss any focus group topic areas. There will be a Public Listening Session where the Council invites the public to engage Council leadership and NMFS representatives in a Q & A roundtable session. Those in attendance will be able to ask questions or comment on any issue related to Mid-Atlantic Fisheries Management including annual specifications, ecosystem management, bycatch reduction, catch shares, etc. On Wednesday, August 17, the Executive Committee will meet to receive an update on SSC Ecosystems Sub-Committee activities. New and reappointed Council members will be sworn into office and there will be an election of Council Officers. The Council in conjunction with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, Black Sea Bass and Bluefish Boards will review the Scientific and Statistical Committee's (SSC) and the associated Monitoring Committee's and Advisory Panel's specification recommendations for 2012 and adopt 2012 commercial and recreational harvest levels and commercial management measures for the summer flounder, scup, black sea bass and bluefish fisheries. Research Set-Aside Priorities will be discussed for 2013. The Council will hold its regular Business Session to approve the June 2011 minutes and address any outstanding actions from the June 2011 meeting, receive Liaison Reports, receive an overview of Amendment 6 to the Monkfish FMP and Council recommendations to the Monkfish O/S Committee, Organizational Reports to include the SAW/SARC 52 report, the Executive Director's Report, the Science Report, Committee Reports, and any continuing and/or new business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: July 22, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–19045 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA597

Marine Mammals; File No. 16443

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for permit.

SUMMARY: Notice is hereby given that David Honig, Nicholas School of the Environment, Duke University Marine Laboratory, 135 Marine Lab Road, Beaufort, NC 28516, has applied in due form for a permit to collect, receive, import, export, possess, and conduct analyses marine mammal specimens for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 29, 2011.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16433 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 16433 in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed

above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The objectives of this research are to study the ecological importance of whales and characterize the impacts of whaling on animals nutritionally dependent on sunken whale remains in the Antarctic. Research will involve collection, import, export, possession, and analyses of bones of sperm (*Physeter macrocephalus*) and minke (*Balaenoptera acutorostrata*) whales which originated from Sweden and Chile. Collection would involve retrieval of a lander on which the whale bones have been placed on the bottom of the Weddell Sea, Antarctica by foreign researchers and under other authorizations. Bones would be imported into the U.S. for analyses. No live animals would be harassed or taken, lethally or otherwise, under the permit. The permit is requested for a five-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 22, 2011.

P. Michael Payne, Chief, Permits,

Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–19124 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Examiner Employment Application.

Form Number(s): None.

Type of Request: Revision of a currently approved collection.

Burden: 5,000 hours annually.

Number of Respondents: 10,000 responses per year.

Avg. Hours per Response: The USPTO expects that it will take the public approximately 30 minutes (0.50 hours) to gather the necessary information, create the document, and submit the completed request, depending upon the type of request and the method of submission (electronic or paper).

Needs and Uses: The Patent Examiner Employment Application, as administered through Monster Hiring Management (MHM) provided by Monster Government Solutions, is used by the public to apply for entry-level patent examiner positions through a user-friendly process. The USPTO uses the electronic transmission of this information to review and rate applicants on-line almost instantaneously. It is also used by the USPTO to expedite the hiring process by eliminating the time used in the mail distribution process, thereby streamlining labor and reducing costs.

The information supplied to the USPTO by an applicant seeking a patent examiner position assists the Human Resources Specialists and hiring managers in determining whether or not an applicant possesses the basic qualifications for that position.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

• *E-mail: InformationCollection@uspto.gov.* Include ''0651–0042 copy request'' in the subject line of the message.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 29, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: July 25, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–19056 Filed 7–27–11; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

Federal Register Citation of Previous Announcement: Vol. 76, No. 142, Monday July 25, 2011, page 44307.

ANNOUNCED TIME AND DATE OF OPEN MEETING: 10 a.m.–12 p.m., Wednesday, July 27, 2011.

CHANGES TO OPEN MEETING: REVISED AGENDA: Matters to be Considered: (1) Decisional Matters: (a) Phthalates notice of requirements; (b) 100ppm lead enforcement statement; (2) Briefing Matter: Virginia Graeme Baker Pool and Spa Safety Act; Incorporation by reference of ANSI successor standard.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 26, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–19232 Filed 7–26–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, August 3, 2011; 10–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 26, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–19233 Filed 7–26–11; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled Annual Grantee Progress Report to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Amy Borgstrom at (202) 606–6930. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 833–3722 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, *Attention:* Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically *by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments: A 60-day public comment Notice was published in the **Federal Register** on May 20, 2011. This comment period ended July 13, 2011. No public comments were received from this Notice.

Description: The Corporation seeks to renew the current information collection. The Corporation is seeking approval of the attached Annual Grantee Progress Report which will be used by grantees of the Corporation's AmeriCorps State and National in their annual reporting. The Annual Grantee Progress Report will provide information for Corporation staff to monitor grantee progress, and to respond to requests from Congress and other stakeholders. The information collection will otherwise be used in the same manner as the approved information collection. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 7/31/2011.

Type of Review: New Information Collection.

Agency: Corporation for National and Community Service.

Title: Annual Grantee Progress Report.

OMB Number: 3045–0101.

Agency Number: None.

Affected Public: Grantees of AmeriCorps State and National programs.

Total Respondents: 154.

Frequency: Annually.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 1,232 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 22, 2011.

Jennifer Bastress Tahmasebi,

Deputy Director, AmeriCorps State and National.

[FR Doc. 2011–19059 Filed 7–27–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0027]

Privacy Act of 1974; System of Records; Correction

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Notice to add a system of records; correction.

SUMMARY: On November 22, 2010 (75 FR 71081–71083), DoD published a notice announcing its intent to add a new Privacy Act System of Records. The incorrect system identification number was cited. This notice corrects that error.

DATES: Effective July 28, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, or by phone at (703) 428–6185.

SUPPLEMENTARY INFORMATION: On November 22, 2010, DoD published a notice announcing its intent to add a new system to its inventory of Privacy Act System of Records: Department of Defense Non-appropriated Fund Health Benefits (DoDNHB). Subsequent to the publication of that notice, DoD discovered that the system identification number on page 71082 was incorrectly published.

Correction

In the notice (FR Doc. 2010–29339) published on November 22, 2010 (75 FR 71081–71083) make the following correction. On page 71082, in the first column, in the line preceding the **SYSTEM NAME** heading, the system identification number ''A0215–3a FMWRC (DoD)'' should read ''A0215–1a FMWRC (DoD)''.

Dated: July 25, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–19091 Filed 7–27–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of The Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Board of Advisors (BOA) to the Presidents of the Naval Postgraduate School (NPS) and the Naval War College (NWC) and its subcommittees will be held. This meeting will be open to the public.

DATES: The meeting will be held on Thursday, September 29, 2011, from 8 a.m. to 4 p.m. and on Friday, September 30, 2011, from 8 a.m. to 4 p.m. Eastern Time Zone.

ADDRESSES: The meeting will be held at the Office of Naval Research, 875 N. Randolph Street, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, CA 93943–5001, telephone number 831–656–2514.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elicit the advice of the Board on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between the NPS and the Air Force Institute of Technology. The board examines the effectiveness with which the NPS and the NWC are accomplishing its mission. The agenda is as follows:

(1) September 29, 2011: General deliberations and inquiry into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operations of the Naval Postgraduate School as the board considers pertinent.

(2) September 30, 2011: General deliberations and inquiry into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operations of the Naval War College as the board considers pertinent.

Individuals without a DoD Government Common Access Card require an escort at the meeting location. For access, information, or to send written comments regarding the NPS/NWC BOA contact Ms. Jaye Panza, Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001 or by fax 831–656–3145 by September 15, 2011.

Dated: July 22, 2011.

L. M. Senay,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–19055 Filed 7–27–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before August 29, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: July 25, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: National Evaluation of the Technical Assistance and Dissemination (TA&D) Program: Grantee Questionnaire/Interview and State Survey Data Collection.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Not-for-profit institutions; State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 1,035.

Total Estimated Annual Burden Hours: 1,028.

Abstract: This data collection will focus on gathering relevant information on the Technical Assistance and Dissemination (TA&D) Program from program grantees and from officials at State Education Agencies (SEAs) and Part C lead agencies. This data collection will include two activities. The first activity will be a TA&D Program Grantee Questionnaire/Interview, which will yield detailed descriptive information of TA&D Program grantees' activities concerning the topic areas addressed by TA&D Program grantees, the practices and outcomes in particular on which grantees are focused, as well as the technical assistance products and services provided by the TA&D Program grantees and to whom they provide them. The second activity will be a state survey, which will provide information concerning the needs that SEAs and Part C lead agencies have for technical assistance to support the implementation of the Individuals with Disabilities Education Act (IDEA) and support improvement of child outcomes, and the technical assistance services and products that have been accessed or received by selected staff at the state level from Office of Special Education Programs (OSEP) TA&D Program centers and their satisfaction with those services and products.

The data from these two activities will address the following research questions:

1. What technical assistance do state agencies (*i.e.,* state educational agencies and Part C lead agencies) need to implement IDEA 2004 effectively and

improve outcomes for children with disabilities?

2. To what extent do state agencies receive TA, in areas of need, to implement IDEA 2004 effectively and improve outcomes for children with disabilities?

3. What are the topic areas addressed by TA&D grantees and on which outcomes in particular are grantees focused?

4. What technical assistance products and services do TA&D program grantees provide?

5. What technical assistance products and services do state agencies receive in order to help meet their needs to implement IDEA 2004 effectively and improve outcomes for children with disabilities?

6. For focal topic areas, to what extent are state agencies satisfied with the products and services received from TA&D grantees?

This data collection will provide unique, detailed data and information that are not currently available from other sources but that are necessary in order to accurately understand the role that the TA&D Program plays in supporting state agencies in their implementation of IDEA. The National Evaluation of the TA&D Program is part of the National Assessment of the Individuals with Disabilities Education Improvement Act of 2004 (hereafter referred to as the National Assessment). Failure to collect these data may result in the Department of Education being unable to adequately report to Congress on the National Assessment.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4615. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–19128 Filed 7–27–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities

AGENCY: Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Notice of an open meeting via conference call.

SUMMARY: The notice sets forth the schedule and agenda of the meeting of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10 (a) (2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: August 12, 2011.

Time: 11 a.m.–5 p.m., Eastern Standard Time.

ADDRESSES: The Commission will meet via conference call on August 12, 2011. Members of the public have the option of participating in the open meeting remotely. Remote access will be provided via an internet webinar service utilizing VoiP (Voice Over Internet Protocol). The login address for members of the public is *https://aimpsc.ilinc.com/join/bbxmffc.* This login information is also provided via the Commission's public listserv at *pscpublic@lists.cast.org* and posted at the following site: *http://www2.ed.gov/about/bdscomm/list/aim/index.html.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Shook, Program Specialist, Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202; *telephone:* (202) 245–7642, fax: 202–245–7638.

SUPPLEMENTARY INFORMATION: The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities (the Commission) is established under Section 772 of the Higher Education Opportunity Act, Public Law 110–315, dated August 14, 2008. The Commission is established to (a) conduct a comprehensive study, which will—(I) assess the barriers and systemic issues that may affect, and technical solutions available that may improve, the timely delivery and quality of accessible instructional materials for postsecondary students with print disabilities, as well as the effective use of such materials by faculty and staff; and (II) make recommendations related to the development of a comprehensive approach to improve the opportunities for postsecondary students with print disabilities to access instructional materials in specialized formats in a time frame comparable to the availability of instructional materials for postsecondary nondisabled students.

In making recommendations for the study, the Commission shall consider—(I) how students with print disabilities may obtain instructional materials in accessible formats within a time frame comparable to the availability of instructional materials for nondisabled students; and to the maximum extent practicable, at costs comparable to the costs of such materials for nondisabled students; (II) the feasibility and technical parameters of establishing standardized electronic file formats, such as the National Instructional Materials Accessibility Standard as defined in Section 674(e)(3) of the Individuals with Disabilities Education Act, to be provided by publishers of instructional materials to producers of materials in specialized formats, institutions of higher education, and eligible students; (III) the feasibility of establishing a national clearinghouse, repository, or file-sharing network for electronic files in specialized formats and files used in producing instructional materials in specialized formats, and a list of possible entities qualified to administer such clearinghouse, repository, or network; (IV) the feasibility of establishing market-based solutions involving collaborations among publishers of instructional materials, producers of materials in specialized formats, and institutions of higher education; (V) solutions utilizing universal design; and (VI) solutions for low-incidence, high-cost requests for instructional materials in specialized formats.

During the meeting, the Commission will discuss the first draft of the final report. Given the limited meeting time, the Commission does not anticipate that there will be an opportunity for public comment during the teleconference meeting. Members of the public are encouraged to submit written comments to the AIM Commission website at *aimcommission@ed.gov,* and the Commission will respond to the comments if possible. Members of the

public who would like to offer comments as part of the meeting may submit written comments to *AIMCommission@ed.gov* or by mail to Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, 550 12th St., SW., Room PCP–5113, Washington, DC 20202.

All submissions will become part of the public record. Members of the public may also join the Commission's list serv at *PSCpublic@lists.cast.org.*

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public. Records are kept of all Commission proceedings and are available for public inspection at the Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202, Monday–Friday during the hours of 8:00 a.m. to 4:30 p.m.

Additional Information

Individuals who will need accommodations for a disability in order to listen to the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Elizabeth Shook at (202) 245–7642, no later than August 5, 2011. We will make every attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The conference call will be accessible to individuals with disabilities.

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Dated: July 22, 2011.

Alexa Posny,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 2011–19133 Filed 7–27–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–600–001]

Commission Information Collection Activities (FERC–600); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 13, 2011 (76 FR 28014) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by August 29, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0180 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC11–600–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp.* To file the document electronically, access the Commission's website and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC11–600–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC11–600 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–600, ''Rules of Practice and Procedure: Complaint Procedures'', (OMB No. 1902–0180) is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA), 16 U.S.C. 791a-825r; the Natural Gas Act (NGA), 15 USC 717–717w; the Natural Gas Policy Act (NGPA), 15 USC 3301–3432, the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 2601–2645; the Interstate Commerce Act, 49 U.S.C. App. § 1 *et. seq.,* the Outer Continental Shelf Lands Act, 43 USC 1301–1356 and the Energy Policy Act of 2005, (Pub. L.109–58) 119 Stat. 594.

With respect to the natural gas industry, section 14(a) of the NGA provides: The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

For public utilities, section 205(e) of the FPA provides: Whenever any such new schedule is filed, the Commission shall have the authority, either upon complaint or upon its own initiative without complaint at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon hearing concerning the lawfulness of such rate, charge, classification, or service; and

pending such hearing and decision of the Commission.

Section 215(d)(5) of the FPA provides: The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

Concerning hydropower projects, section 19 of the FPA provides: * * * it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control.

For qualifying facilities, section 210(h)(2)(B) of PURPA provides: Any electric utility, qualifying co-generator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph.

Likewise for oil pipelines, Part 1 of the Interstate Commerce Act (ICA), sections 1, 6 and 15 (re-codified by Pub. L. 95–473 and found as an appendix to Title 49 U.S.C.) the Commission is authorized to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If a proposed oil rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. Section 13 of the ICA provided that: Any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to the Commission by petition which shall briefly state the facts: whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, with in a reasonable time, to be specified by the Commission. * * *

In Order No. 602, 64 FR 17087 (April 8, 1999), the Commission revised its regulations governing complaints filed with the Commission under the above statutes. Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner. In order to achieve the latter, the Commission revised Rule 206 of its Rules of Practice and Procedure (18 CFR 385.206) to require that a complaint satisfy certain informational requirements, that answers be filed in a shorter, 20-day time frame, and that parties may employ various types of alternative dispute resolution procedures to resolve complaints.

In Order No. 647, 69FR 32436 (June 10, 2004), the Commission revised its regulations to simplify the formats it requires for various types of notices. These revisions provide for a more uniform formatting and make it easier for the Commission to update the form of notice formatting without the necessity of initiating a rulemaking for every change. A new subsection 18 CFR 385.203(d) replaced the former format requirements. Among the provisions that were affected by these revisions was 18 CFR 385.206(b) (10).

On October 30, 2008, the Office of Management and Budget (OMB) approved the reporting requirements contained in FERC–600 for a term of three years, the maximum period permissible under the Paperwork Reduction Act [1] before an information collection must be resubmitted for approval. As noted above this notice seeks public comments in order for the Commission to submit a justification to OMB to approve and extend the current expiration date of the FERC–600 reporting requirements. The data in complaints filed by interested/affected parties regarding oil and natural gas pipeline operations, electric and hydropower facilities in their applications for rate changes, service, licensing or reliability are used by the Commission in establishing a basis for various investigations and to make an initial determination regarding the merits of the complaint.

Investigations may range from whether there is undue discrimination in rates or service to questions regarding market power of regulated entities to environmental concerns. In order to make a better determination, it is important to know the specifics of any oil, gas, electric, and hydropower complaint ''upfront'' in a timely manner and in sufficient detail to allow the Commission to act swiftly. In addition, such complaint data will help the Commission and interested parties to monitor the market for exercises of market power or undue discrimination. The information is voluntary but submitted with prescribed filing requirements. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 343, and 385, 385.206, 385.203 and 385.213.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Data collection	Number of respondents [2]	Average Number of responses per respondent	Average Number of burden hours per response	Total annual hours
	(1)	(2)	(3)	(1) × (2) × (3)
FERC–600	88	1	14	1,232

Estimated cost burden to respondents is $84,328. (1,232 hours/2080 hours per year times $142,372 per year average per employee = $84,328). The cost per respondent is $958. There is a slight increase in the average number of respondents and number of filings since the last renewal request (in 2008, the average number of respondents was 81).

[1] Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3501–3520.

[2] This is a three year average of the number of respondents (2008–2010).

The cost per respondent has increased to reflect adjustments due to inflationary costs.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19075 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 487–082]

PPL Holtwood, LLC; Notice of Application for Amendment of License, and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 487–082.

c. *Date Filed:* May 24, 2010 (as supplemented on September 20, and November 19, 2010).

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Wallenpaupack Hydroelectric Project.

f. *Location:* The proposed non-project use would be located at the White Sands Springs beach access area on the south side of Lake Wallenpaupack in Pike County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Michael G. Bennett, Plant Manager, Hydro. PPL Generation, LLC, 2 North Ninth Street, Allentown, PA 18101–1179. 610–774–4450.

i. *FERC Contact:* Bill Doran at (202) 502–6795, or e-mail: *william.doran@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* August 19, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.*If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–487–082) on any comments, motions, or recommendations filed.

k. *Description of Request:* PPL Holtwood, LLC, requests Commission authorization to permit White Sands Springs to install four new docks, accommodating 128 slips, to its existing single dock, 12 slip, residential community marina. The additional slips would serve the residents of the White Sands Springs Community. No dredging activities, shoreline stabilization, or fueling facilities are associated with the proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b).

Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19073 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–512–000]

National Fuel Gas Supply Corporation; Notice of Application

Take notice that on July 8, 2011, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP11–512–000 an application, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157 of the Federal Energy Regulatory Commission's Regulations, to construct and operate its Line N 2012 Expansion Project, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, National Fuel requests authorization to: (1) Install approximately 4.85 miles of 24-inch pipeline; (2) install two 10,310 horsepower compressors at the Buffalo Compressor Station; (3) install four new road crossings; and (4) convert approximately 4.85 miles of existing Line N and the four existing road crossings in Washington County, Pennsylvania to inactive status for possible future use. National Fuel states that the project will create an additional 150,000 Dth per day of firm capacity. The estimated total cost of the Line N 2012 Expansion Project is $35,823,805.

Any questions regarding this application should be directed to Antoinetta Mucilli, Senior Attorney for National Fuel, 6363 Main Street, Williamsville, New York 14221, or call at (716) 857–7067.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: August 11, 2011.

Dated: July 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19082 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2629–010]

Morrisville Village of, Vermont; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No:* 2629–010.

c. *Date Filed:* May 23, 2011.

d. *Applicant:* Morrisville Village of, Vermont.

e. *Name of Project:* Morrisville Project.

f. *Location:* The project is located on the Lamoille and Green Rivers in Lamoille County, Vermont.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Craig Myotte, General Manager, Morrisville Village Water & Light Department, 857 Elmore Street, Morrisville, Vermont. Tel: (802) 888–6521.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 21, 2011.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/efiling.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system (*http://www.ferc.gov/docs-filing/ecomment.asp*) and must include name and contact information at the end of comments. The Commission strongly encourages electronic filings.

All documents (original and seven copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2629–010) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee proposes to replace an existing 4-foot high by 216-foot long wooden flashboard on one of the Morrisville dam spillways with two sections of 4-foot high by 108-foot long automatic crest control system. There would be no change in the authorized normal maximum water surface elevation of 631.79 feet NGVD datum.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site using the ''eLibrary'' link at *http://elibrary.ferc.gov/idmws/search/fercgensearch.asp.* Enter the docket number excluding the last three digits (P–2629) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19080 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1817–001.

Applicants: Southwestern Public Service Company.

Description: Change in Status Report of Southwestern Public Service Company.

Filed Date: 07/19/2011.

Accession Number: 20110719–5237.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–3420–001.

Applicants: Gridway Energy Corp.

Description: Gridway Energy Corp. submits tariff filing per 35: Compliance Filing to be effective 7/20/2011.

Filed Date: 07/20/2011.

Accession Number: 20110720–5047.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 10, 2011.

Docket Numbers: ER11–4078–000.

Applicants: Northern States Power Company.

Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii: 2011–7–20_CAPX_Fargo_R–R_OMA_Agmt to be effective 8/18/2010.

Filed Date: 07/20/2011.

Accession Number: 20110720–5045.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 10, 2011.

Docket Numbers: ER11–4079–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35: Joint Operating Agreement with Associated Electric Cooperative, Inc. to be effective 7/21/2011.

Filed Date: 07/20/2011.
Accession Number: 20110720–5069.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 10, 2011.

Docket Numbers: ER11–4080–000.
Applicants: Northeast Utilities Service Company.
Description: Rate Schedule Cancellation—Town of Norwood by Northeast Utilities Service Company on behalf of CL&P and WMECO.
Filed Date: 07/20/2011.
Accession Number: 20110720–5088.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 10, 2011.

Docket Numbers: ER11–4081–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: RAR Compliance Filing to be effective 10/1/2012.
Filed Date: 07/20/2011.
Accession Number: 20110720–5090.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 10, 2011.

Docket Numbers: ER11–4086–000.
Applicants: Williams Gas Marketing, Inc.
Description: Notice of Cancellation by Williams Gas Marketing, Inc.
Filed Date: 07/20/2011.
Accession Number: 20110720–5110.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 10, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19083 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2901–002.
Applicants: Duke Energy Kentucky, Inc.
Description: Duke Energy Kentucky, Inc. submits tariff filing per 35: Compliance Filing DEI & DEK to be effective 4/18/2011.
Filed Date: 07/19/2011.
Accession Number: 20110719–5034.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–2902–002.
Applicants: Duke Energy Indiana, Inc.
Description: Duke Energy Indiana, Inc. submits tariff filing per 35: Compliance Filing DEI & DEK to be effective 4/18/2011.
Filed Date: 07/19/2011.
Accession Number: 20110719–5033.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–3667–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.17(b): Additional Information Regarding APS Service Agreement No. 193 Amendment to be effective 4/29/2011.
Filed Date: 07/19/2011.
Accession Number: 20110719–5047.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–3913–001.
Applicants: AES Thames, LLC.
Description: AES Thames, LLC submits tariff filing per 35.17(b): AES Thames Supplement to MBR Filing to be effective 9/30/2011.
Filed Date: 07/19/2011.
Accession Number: 20110719–5188.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–4074–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: E&P Agreement for SunPower Solar Star to be effective 7/20/2011.
Filed Date: 07/19/2011.
Accession Number: 20110719–5001.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–4075–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2011–07–19 CAISO's Rate Schedule No. 50, to be effective 1/1/2012.
Filed Date: 07/19/2011.
Accession Number: 20110719–5065.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–4076–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Northern States Power Company, a Minnesota corporation

submits tariff filing per 35.13(a)(2)(iii: 2011–7–19_NSP–SMMPA_Letter Agrm_312–NSP to be effective 12/31/2010.

Filed Date: 07/19/2011.

Accession Number: 20110719–5072.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Docket Numbers: ER11–4077–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii: 2011–7–19_CAPX_FARGO_R–R_Phase-1_CMA_Agmt to be effective 8/18/2010.

Filed Date: 07/19/2011.

Accession Number: 20110719–5161.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–2–000.

Applicants: Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Power Company.

Description: Report of the acquisition and/or demonstration of control of sites for new generation development of Southern Company Services, Inc. on behalf of Alabama Power Company *et al.*

Filed Date: 07/19/2011.

Accession Number: 20110719–5059.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 09, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19079 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–2282–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.204: DTI–CP11–42 Volume 1A Change to be effective 7/22/2011.

Filed Date: 07/19/2011.

Accession Number: 20110719–5114.

Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Docket Numbers: RP11–2283–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Southwestern Amendments to Negotiated Rate Agreements to be effective 7/15/2011.

Filed Date: 07/19/2011.

Accession Number: 20110719–5116.

Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Docket Numbers: RP11–2284–000.

Applicants: Gulfstream Natural Gas System, LLC.

Description: Gulfstream Natural Gas System, LLC submits tariff filing per 154.204: Negotiated Rate Agreement—FMPA to be effective 8/1/2011.

Filed Date: 07/19/2011.

Accession Number: 20110719–5143.

Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Docket Numbers: RP11–2285–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.204: 20110720 Remove Non-Conforming Contracts to be effective 8/20/2011.

Filed Date: 07/20/2011.

Accession Number: 20110720–5029.

Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Docket Numbers: RP11–2286–000.

Applicants: Carolina Gas Transmission Corporation.

Description: Carolina Gas Transmission Corporation submits tariff filing per 154.203: Settlement Compliance Filing RP11–2076 to be effective 11/1/2011.

Filed Date: 07/20/2011.

Accession Number: 20110720–5030.

Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Docket Numbers: RP11–2287–000.

Applicants: Dauphin Island Gathering Partners.

Description: 2011 Refund Report of Dauphin Island Gathering Partners.

Filed Date: 07/19/2011.

Accession Number: 20110719–5235.

Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Docket Numbers: RP11–2288–000.

Applicants: El Paso Natural Gas Company.

Description: Request for Waiver Determination of El Paso Natural Gas Company.

Filed Date: 07/20/2011.

Accession Number: 20110720–5054.

Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Docket Numbers: RP11–2289–000.

Applicants: Golden Triangle Storage, Inc.

Description: Golden Triangle Storage, Inc. submits tariff filing per 154.204: GTS Filing of Revised Tariff Records to be effective 9/1/2011.

Filed Date: 07/18/2011.

Accession Number: 20110718–5221.

Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19089 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2269–001, ER10–2285–001; ER10–2270–001; ER10–2271–001; ER10–2301–001; ER10–2272–001; ER10–2273–001; ER10–2306–001.

Applicants: New York State Electric & Gas Corp., Rochester Gas & Electric Corporation, Central Maine Power Company, Hartford Steam Company, Carthage Energy, LLC, PEI Power II, LLC, Energetix, Inc., NYSEG Solutions, Inc.

Description: Notice of Non-Material Change in Status of Iberdrola USA Companies.

Filed Date: 07/21/2011.

Accession Number: 20110721–5206.

Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER10–3142–001, ER10–3145–001, ER10–3147–001, ER10–3148–001, ER10–3114–001, ER10–3116–001, ER10–3118–001, ER10–3120–001, ER10–3121–001, ER11–2036–001, ER10–3126–001, ER10–3128–001, ER10–3131–001, ER10–1800–001, ER10–3136–001, ER11–2701–002.

Applicants: Mountain View Power Partners, LLC, Indianapolis Power & Light Company, AES Eastern Energy, LP, AES Energy Storage, LLC, AES Alamitos, LLC, AES Redondo Beach, LLC, Condon Wind Power, LLC, AES Huntington Beach, L.C., AES Armenia Mountain Wind, LLC, AES Creative Resources, L.P., AES ES Westover, LLC, AES Ironwood, LLC, AES Red Oak, L.L.C., AES Laurel Mountain, LLC, AEE2, LLC, Mountain View Power Partners IV, LLC.

Description: Supplemental Information to triennial market power analysis of AEE2, LLC, *et al.*

Filed Date: 07/21/2011.

Accession Number: 20110721–5083.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3769–001.

Applicants: WSPP Inc.

Description: WSPP Inc. submits tariff filing per 35.17(b): Amendment to Incorporation of Rate Schedule into WSPP Agreement (Westar Energy) to be effective 6/1/2011.

Filed Date: 07/21/2011.

Accession Number: 20110721–5081.

Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–3979–002.

Applicants: PJM Interconnection, LLC, Midwest Independent Transmission System Operator, Inc.

Description: PJM Interconnection, LLC submits tariff filing per 35: Errata to Compliance Filing in Docket No. ER11–3979 correcting Att 2 Sec 6.6 to be effective 6/16/2011.

Filed Date: 07/21/2011.

Accession Number: 20110721–5128.

Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4082–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 7–20–11_RS114 SPS–Central Valley to be effective 10/1/2010.

Filed Date: 07/21/2011.

Accession Number: 20110721–5000.

Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4083–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 7–20–11_RS115 SPS–Farmers to be effective 10/1/2010.

Filed Date: 07/21/2011.

Accession Number: 20110721–5002.

Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4084–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 7–20–11_RS116 SPS–Lea County to be effective 10/1/2010.

Filed Date: 07/21/2011.

Accession Number: 20110721–5003.

Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4085–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 7–20–11_RS117 SPS–Roosevelt to be effective 10/1/2010.

Filed Date: 07/21/2011.
Accession Number: 20110721–5004.
Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4087–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: 2011 Hartford NITSA Filing to be effective 7/1/2011.
Filed Date: 07/21/2011.
Accession Number: 20110721–5050.
Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4088–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: Queue Position No. W3–123? Original Service Agreement No. 2970 to be effective 6/21/2011.
Filed Date: 07/21/2011.
Accession Number: 20110721–5084.
Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4089–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: BPA NITSA (UIUC) to be effective 10/1/2011.
Filed Date: 07/21/2011.
Accession Number: 20110721–5113.
Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4090–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: City of Ukiah WPA and NCPA IA to be effective 7/22/2011.
Filed Date: 07/21/2011.
Accession Number: 20110721–5127.
Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4091–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: New, Amended, and Cancelled Exhibit B's in APS Rate Schedule No. 217 to be effective 9/19/2011.
Filed Date: 07/21/2011.
Accession Number: 20110721–5140.
Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19088 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3034–001.
Applicants: ISO New England Inc.
Description: Informational Filing of ISO New England Inc.
Filed Date: 07/15/2011.
Accession Number: 20110715–5141.
Comment Date: 5 p.m. Eastern Time on Monday, August 01, 2011.

Docket Numbers: ER11–4092–000.
Applicants: New York State Electric & Gas Corporation.
Description: New York State Electric & Gas Corporation submits tariff filing per 35.1: Refiling of NYSEG and NYPA Facilities Agreement to be effective 9/1/2011.
Filed Date: 07/21/2011.
Accession Number: 20110721–5171.
Comment Date: 5 p.m. Eastern Time on Thursday, August 11, 2011.

Docket Numbers: ER11–4093–000.
Applicants: New York State Electric & Gas Corporation.
Description: New York State Electric & Gas Corporation submits tariff filing per 35.15: Cancellation of NYEG Rate Schedule FERC No. 200 (Facilities Agreement with NYPA) to be effective 9/1/2011.
Filed Date: 07/22/2011.
Accession Number: 20110722–5005.
Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Docket Numbers: ER11–4094–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: MISO–MH Coord Agreement Baseline Filing to be effective 9/21/2011.
Filed Date: 07/22/2011.
Accession Number: 20110722–5030.
Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Docket Numbers: ER11–4095–000.
Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: NITSA-PJM and DEMEC, Service Agreement No. 2978 to be effective 2/1/2011.

Filed Date: 07/22/2011.

Accession Number: 20110722–5042.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Docket Numbers: ER11–4096–000.

Applicants: EAM Nelson Holding, LLC.

Description: EAM Nelson Holding, LLC submits tariff filing per 35.1: EAM Nelson/EWOM Master PPA to be effective 9/20/2011.

Filed Date: 07/22/2011.

Accession Number: 20110722–5054.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Docket Numbers: ER11–4097–000.

Applicants: PJM Interconnection, LLC, American Electric Power Service Corporation.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: AEPSC submits SA No. 1336–27th Revised ILDSA among AEPSC & Buckeye to be effective 7/8/2011.

Filed Date: 07/22/2011.

Accession Number: 20110722–5073.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Docket Numbers: ER11–4098–000.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submits tariff filing per 35.13(a)(2)(iii: CP Energy Marketing (US) Inc. Localized Costs Responsibility Agreement to be effective 8/1/2011.

Filed Date: 07/22/2011.

Accession Number: 20110722–5095.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Docket Numbers: ER11–4099–000.

Applicants: Public Service Company of New Hampshire.

Description: Public Service Company of New Hampshire submits tariff filing per 35.13(a)(2)(iii: CP Energy Marketing (US) Inc. Localized Costs Responsibility Agreement to be effective 8/1/2011.

Filed Date: 07/22/2011.

Accession Number: 20110722–5099.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Docket Numbers: ER11–4100–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–07–22 CAISO Net Benefits Test Comp. Filing to be effective 10/1/2011.

Filed Date: 07/22/2011.

Accession Number: 20110722–5102.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Docket Numbers: ER11–4101–000.

Applicants: Western Massachusetts Electric Company.

Description: Western Massachusetts Electric Company submits tariff filing per 35.13(a)(2)(iii: CP Energy Marketing (US) Inc., Localized Costs Responsibility Agreement to be effective 8/1/2011 under ER11–4101 Filing Type:10.

Filed Date: 07/22/2011.

Accession Number: 20110722–5104.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19068 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–19–000]

Tesoro Refining and Marketing Company v. SFPP, L.P.; Notice of Complaint

Take notice that on July 20, 2011, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206; the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2; sections 1(4), 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. App. 1(4), 1(5), 8, 9, 13, 15, and 16 (1988); and section 1803 of the Energy Policy Act of 1992 (EPAct), Tesoro Refining and Marketing Company (Tesoro) filed a formal complaint against SFPP, L.P. (SFPP).

Tesoro alleges that because SFPP has over-recovered its cost of service in 2010, and their proposed index-based rate increases exceed the actual decrease in the pipeline's previous-year costs in such a manner that substantially exacerbate that over-recovery, SFPP is not entitled to raise its rates. Tesoro requests that the Commission determine that the rates established by SFPP, L.P.

in FERC Tariff Nos. 194.1.0, 195.1.0, 196.3.0, 197.1.0, 198.3.0, 199.1.0, and 200.1.0 are unjust and unreasonable; prescribe new just and reasonable for the SFPP interstate pipeline system; and order SFPP to pay refunds, plus interest, to Tesoro for shipments made by Tesoro under each of the tariffs specified above from July 1, 2011 through the date on which the Commission resolves the issues presented in this docket and related proceedings. Tesoro has also requested that the Commission grant such other, different or additional relief as it may determine to be appropriate.

Tesoro certifies that copies of the complaint were served on the contacts for SFPP as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 9, 2011.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19077 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR 11–18–000]

Tesoro Refining and Marketing Company v. SFPP, L.P.; Notice of Complaint

Take notice that on July 20, 2011, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206; the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2; sections 1(4), 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act, 49 U.S.C. App. 1(4), 1(5), 8, 9, 13, 15, and 16 (1988); and section 1803 of the Energy Policy Act of 1992.

Tesoro Refining and Marketing Company (Complainant) filed a formal complaint against SFPP L.P. (SFPP or Respondent) alleging that SFPP has substantially over-recovered its cost of service for 2010. The Complainant states that the Respondent's rates contained in Tariff Nos. 194.0.0, 195.0.0, 196.2.0, 197.0.0, 198.2.0, 199.0.0, and 200.0.0 are unjust and unreasonable and request that the Commission prescribe new rates for the shipment of refined petroleum products on its interstate pipeline. The Complainant seeks repayment, reparations and damages plus interest from the Respondent from July 1, 2010 through the date of the Commission's resolution of this issue.

The Complainant certifies that copies of the complaint were served on the contacts for SFPP as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 9, 2011.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19076 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–66–012]

Louisiana Public Service Commission; The Council of the City of New Orleans v. Entergy Corporation; Notice of Filing

Take notice that on July 20, 2011, Entergy Services, Inc., acting as agent for Entergy Operating Companies, filed an amended/corrected report of refunds in compliance with the Commission's June 9, 2011 Order, *Louisiana Public Service Commission and the Council of the City of New Orleans* v. *Entergy Corporation,*135 FERC ¶ 61,218 (2011).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 10, 2011.

Dated: July 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19081 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4051–000]

CSOLAR IV South, LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of CSOLAR IV South, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18445 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER11–2875–001, ER11–2875–002; Docket No. EL11–20–001]

PJM Interconnection, L.L.C., PJM Power Providers Group v. PJM Interconnection, L.L.C.; Supplemental Notice of Staff Technical Conference

On June 13, 2011, the Commission issued an order in this proceeding establishing a staff technical conference.[1] This notice establishes the agenda and topics for discussion at the technical conference, which will be held on July 28, 2011 from 9 a.m. to 12:30 p.m. (EDT) in the Commission Meeting Room at the Commission's headquarters, 888 First Street, NE., Washington, DC. Commission staff will lead the technical conference, and representatives from the following entities will participate as panelists: American Public Power Association, Dominion Resources Services, Inc., Maryland Public Service Commission, Monitoring Analytics, L.L.C., National Rural Electric Cooperative Association, New Jersey Board of Public Utilities, PJM Interconnection, L.L.C., PJM Load Group, PJM Power Providers Group, and PSEG Companies. All interested parties are invited to attend, and registration is not required.

The issues and questions to be discussed during this conference are attached. The purpose of the technical conference is to provide Commission staff and interested parties an opportunity to explore the applicability of PJM's Minimum Offer Price Rule (MOPR) to resources designated as ''self supply.''

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to the Calendar of Events on *http://www.ferc.gov* and locating this event in the calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information on this conference, please contact Jonathan Fernandez at *jonathan.fernandez@ferc.gov* or (202) 502–6604.

Dated: July 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Discussion Questions for Technical Conference on Self Supply and PJM's Minimum Offer Price Rule

July 28, 2011

Agenda

9 a.m.–10:30 a.m.

1. Explain your understanding of how new resources designated as ''self supply'' would commit, clear, and be compensated in PJM's base residual auction prior to the April 12, 2011 Order.

2. Explain the conditions under which exempting new self-supply resources from PJM's MOPR would *not*

[1] *PJM Interconnection, L.L.C.,* 135 FERC ¶ 61,228 (2011).

present the opportunity to exercise buyer market power.

3. Explain how the Commission's April 12 Order may impact long-term resource planning.

10:30 a.m.–10:45 a.m.—Break

10:45 a.m.–12:30 p.m.

4. Does the same incentive to exercise buyer market power exist for buyers who largely or totally self-supply as compared to buyers who self-supply only a small portion of their load?

5. Does the same incentive to exercise buyer market power exist for small load serving entities as compared to large load serving entities?

6. Would the market power concern about using self-supply be alleviated if the self-supplied resources are acquired through a procurement process that does not discriminate between new and existing resources? If yes, what factors should be analyzed to determine whether a procurement process is non-discriminatory?

7. Explain why the Fixed Resource Requirement (FRR) Alternative is or is not a viable alternative for those wishing to self-supply.

8. What other alternatives to the FRR option would allow parties to self-supply while deterring buyer market power?

Panelists

- Patrick McCullar, President & CEO, Delaware Municipal Electric Corporation, Inc., representing American Public Power Association
- Gregory J. Morgan, Managing Director of Regulated Operations, Dominion Virginia Power, representing Dominion Resources Services, Inc.
- Douglas R. M. Nazarian, Chairman, Maryland Public Service Commission
- Dr. Joseph E. Bowring, Market Monitor, Monitoring Analytics, L.L.C.
- David L. Mohre, Executive Director, Energy & Power Division, National Rural Electric Cooperative Association
- Lee A. Solomon, President, New Jersey Board of Public Utilities
- Andrew Ott, Senior Vice President-Markets, PJM Interconnection, L.L.C.
- Mark Scott, Director, Structured Trading, Customized Energy Solutions, representing PJM Load Group
- Dr. Roy Shanker, Consultant, PJM Power Providers Group
- Dr. William Hogan, Professor, Harvard University, representing PSEG Companies

[FR Doc. 2011–19086 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12715–003]

Fairlawn Hydroelectric Company, LLC; Notice of Public Meeting

On August 5, 2011, Office of Energy Projects staff may participate in a public meeting hosted by the U.S. Army Corps of Engineers, Baltimore District (Corps) for the proposed Jennings Randolph Project No. 12715–003 (project). The purpose of the meeting is to discuss potential dam safety issues identified by the Maryland Department of the Environment related to the Corps' dam and any related effects on the project's licensing proceeding.

The meeting will begin at 10 a.m. EDT at the City Crescent Building, 10 S. Howard Street, Baltimore, MD 21201, Room 8510. Interested parties wishing to attend should contact Raymond Smith at (410) 962–4507 or by e-mail at *Raymond.F.Smith@usace.army.mil.*

Dated: July 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19085 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3322–000]

PJM Interconnection, L.L.C.; Supplemental Notice of Staff Technical Conference

On June 21, 2011, the Federal Energy Regulatory Commission (Commission) announced that a staff Technical Conference on Performance Measurement of Demand Response in the PJM Capacity Market will be held on July 29, 2011, beginning at 9 a.m. (EDT) in the Commission Meeting Room at the Commission's headquarters, located at 888 First Street, NE., Washington, DC 20426. The technical conference will be led by Commission staff, and Commissioners may be in attendance. The conference will be open for the public to attend and advance registration is not required.

Attached to this supplemental notice is an agenda for the conference. If any changes are made, the revised agenda will be posted prior to the event on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov.*

The conference will be transcribed. Transcripts will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). A free webcast of this event is also available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

Parties seeking additional information regarding this conference should contact Tristan Cohen at *Tristan.Cohen@ferc.gov* or (202) 502–6598.

Dated: July 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix

Performance Measurement of Demand Response in the PJM Capacity Market; ER11–3322–000

July 29, 2011

Agenda

9 a.m.–9:15 a.m. Greeting and Opening Remarks

9:15 a.m.–11:15 a.m. Discussion on Reliability Issues

1. Whether the customer baseline load (CBL) or peak load contribution (PLC) is a more accurate capacity market performance measure of what a demand response customer would have consumed in the absence of an instruction to reduce load.

2. Whether the current PJM add-back process under the guaranteed load drop (GLD) option, which is used to calculate peak load for capacity for the following delivery year, accurately reflects the fact that the load reduction of an over-performing demand response customer (*i.e.* a customer that provides a level of response greater than the MW nominated for it in the capacity auction) has been used to support an under-performing customer (*i.e.* a customer that provides a level of response less than the nominated MW) in a portfolio aggregated to meet the capacity commitment.

3. Whether PJM dispatchers account for PLCs during an emergency.

4. Whether any load in PJM can be at load levels in excess of PLC during an emergency.

Panelists

• Chris Norton, Director of Regulatory Affairs, American Municipal Power Inc.
• Frank Lacey, Vice President Regulatory, Markets and Government Relations, Comverge, Inc.
• Bruce Campbell, Director of Regulatory Affairs, Demand Response Services, Johnson Controls, Inc.
• Marie Pieniazek, Chief Operating Officer, Energy Curtailment Specialists
• Donald J. Sipe, Attorney, Preti Flaherty Beliveau & Pachios LLP representing EnerNOC, Inc.
➢ Dr. Joseph E. Bowring, Market Monitor, Independent Market Monitor for PJM
➢ Frederick (''Stu'') Bresler, Vice President—Market Operations and Demand Resources, PJM Interconnection, L.L.C.

11:15 a.m.–11:30 p.m. Break

11:30 a.m.–12:30 p.m. Discussion on Capacity Obligations

5. Discuss the capacity obligations of end-use customers whose demand response resources have been committed in a prior RPM auction.
6. Whether a demand response resource should be obligated to reduce below its PLC during an emergency event, even if the magnitude of supply that the resource is providing is otherwise equivalent to its capacity commitment.
7. Whether the PLC limit on nominations in the capacity auction should serve as a basis for requiring load reductions of capacity resources to be below PLC.

Panelists

➢ Chris Norton, Director of Regulatory Affairs, American Municipal Power Inc.
➢ Donald J. Sipe, Attorney, Preti Flaherty Beliveau & Pachios LLP representing EnerNOC, Inc.
➢ Dr. Joseph E. Bowring, Market Monitor, Independent Market Monitor for PJM
➢ Frederick (''Stu'') Bresler, Vice President—Market Operations and Demand Resources, PJM Interconnection, L.L.C.
➢ Robert A. Weishaar, Jr., Counsel to PJM Industrial Customer Coalition, McNees, Wallace & Nurick LLC
➢ Audrey Zibelman, President, Chief Executive Officer, and Founder, Viridity Energy, Inc.

12:30 p.m.–1:15 p.m. Lunch Break

1:15 p.m.–2:15 p.m. Discussion on Load Reductions and Incentives

8. Whether the same MW reduction that is voluntarily made by a peak shaving customer in order to reduce capacity costs should also be eligible to receive incentives from PJM's Load Management programs.
9. Whether the current GLD option provides an incentive for aggregators to offset under-performing resources with resources that over-perform.

Panelists

➢ Chris Norton, Director of Regulatory Affairs, American Municipal Power Inc.
➢ Kevin Evans, VP & GM, Demand Response Services, Johnson Controls, Inc.
➢ Jonathan Falk, Vice President, NERA Economic Consulting representing EnerNOC, Inc.
➢ Dr. Joseph E. Bowring, Market Monitor, Independent Market Monitor for PJM
➢ Andrew L. Ott, Senior Vice President—Markets, PJM Interconnection, L.L.C.
➢ Audrey Zibelman, President, Chief Executive Officer, and Founder, Viridity Energy, Inc.

2:15 p.m.–2:30 p.m. Break

2:30 p.m.–3:30 p.m. Discussion on the Impact of PJM's Proposal

10. Whether PJM's proposal undermines the GLD methodology.
11. Whether PJM's proposal unduly discriminates against resources on days other than the coincident peak days and whether PJM's proposal negatively affects Annual Demand Resource aggregations.

Panelists

➢ John Rossi, Senior Vice President of Business Development, Comverge, Inc.
➢ David Dardis, Constellation
➢ Marie Pieniazek, Chief Operating Officer, Energy Curtailment Specialists
➢ Kenneth D. Schisler, Vice President of Regulatory Affairs, EnerNOC, Inc.
➢ Dr. Joseph E. Bowring, Market Monitor, Independent Market Monitor for PJM
➢ Andrew L. Ott, Senior Vice President—Markets, PJM Interconnection, L.L.C.
➢ Audrey Zibelman, President, Chief Executive Officer, and Founder, Viridity Energy, Inc.

[FR Doc. 2011–19087 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS11–7–000]

Elk River Municipal Utilities; Notice of Petition for Waiver

Take notice that on July 15, 2011, pursuant to 18 CFR 35.28(e)(2) and 358.1(d) and Rules 101(e) and 207 of the Commission's Rules of Practice and Procedure, Elk River Municipal Utilities (Elk River) filed a petition for waiver of any reciprocity-based standards of conduct or open access same-time information system (OASIS) requirements that may apply under Order Nos. 888, 889, 890, 2003, 2004, and 717.

Elk River states that it is not a FERC-jurisdictional ''public utility'' and consequently is not directly subject to the Commission's standards of conduct.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19069 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14124–000]

Reliable Storage 1 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 25, 2011, Reliable Storage 1 LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower near the town of Tazewell, in Claiborne County, Tennessee. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed pumped storage project would consist of the following: (1) A 10-foot-high, 8,200-foot-long roller compacted concrete ringed dike; (2) an upper reservoir with a surface area of 59.7 acres and an 4,017 acre-foot storage capacity; (3) a 200-foot-high, 702.7-foot-long earth embankment dam creating; (4) a lower reservoir with a surface area of 66.5 acres and an 5,785 acre-foot storage capacity; (5) one 24-foot-diameter, 5,300-foot-long penstock; (6) a bifurcation to three 14-foot-diameter, and 50-foot-long penstocks; (7) a powerhouse/pumping station containing three pump/generating units with a total generating capacity of 331 megawatts; (8) a substation; and (9) a 2.86-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 517,000,000 megawatt-hours (MWh), which would be sold to the Tennessee Valley Authority.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Boston, MA 02114; phone (978) 283–2822.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14124–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19071 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14121–000]

Reliable Storage 1 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 25, 2011, Reliable Storage 1 LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower near the town of Luttrell, in Union and Grainger Counties, Tennessee. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed pumped storage project would consist of the following: (1) A 10-foot-high, 11,600-foot-long roller compacted concrete ringed dike; (2) an upper reservoir with a surface area of 57.4 acres and an 4,563 acre-foot storage capacity; (3) a 110-foot-high, 7,977.7-foot-long earth embankment dam creating; (4) a lower reservoir with a surface area of 68.9 acres and a 3,196 acre-foot storage capacity; (5) one 24-foot-diameter, 4,050-foot-long penstock; (6) a bifurcation to three 16-foot-diameter, and 50-foot-long penstocks; (7) a powerhouse/pumping station containing three pump/generating units with a total generating capacity of 320 megawatts; (8) a substation; (9) a 1.1-mile-long, 500 kV transmission line to an existing distribution line; and (10) a new 1,300-foot-long access road. The proposed project would have an average annual generation of 500,000,000 megawatt-hours (MWh), which would be sold to the Tennessee Valley Authority.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Boston, MA 02114; phone (978) 283–2822.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary''

link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14121–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19074 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14122–000]

Reliable Storage 1 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 25, 2011, Reliable Storage 1 LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower near the town of Tazewell, in Claiborne County, Tennessee. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed pumped storage project would consist of the following: (1) A 10-foot-high, 6,700-foot-long roller compacted concrete ringed dike; (2) an upper reservoir with a surface area of 69.1 acres and a 6,620 acre-foot storage capacity; (3) a 140-foot-high, 843.1-foot-long earth embankment dam creating; (4) a lower reservoir with a surface area of 39.7 acres and a 4,511 acre-foot storage capacity; (5) one 24-foot-diameter, 5,300-foot-long penstock; (6) a bifurcation to three 14-foot-diameter, and 50-foot-long penstocks; (7) a powerhouse/pumping station containing three pump/generating units with a total generating capacity of 390 megawatts; (8) a substation; (9) a 4.15-mile-long, 500 kV transmission line to an existing distribution line; and (10) a new 1,300-foot-long access road. The proposed project would have an average annual generation of 590,000,000 megawatt-hours (MWh), which would be sold to the Tennessee Valley Authority.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Boston, MA 02114; phone (978) 283–2822.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14122–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19072 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14125–000]

Reliable Storage 1 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 25, 2011, Reliable Storage 1 LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower near the town of Lake City, in Campbell County, Tennessee. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed pumped storage project would consist of the following: (1) A 10-foot-high, 12,100-foot-long roller compacted concrete ringed dike; (2) an upper reservoir with a surface area of 128.6 acres and an 7,914.4 acre-foot storage capacity; (3) a 180-foot-high, 1,248-foot-long earth embankment dam creating; (4) a lower reservoir with a surface area of 101 acres and an 7,594 acre-foot storage capacity; (5) one 24-foot-diameter, 5,300-foot-long penstock; (6) a bifurcation to three 14-foot-diameter, and 50-foot-long penstocks; (7) a powerhouse/pumping station containing three pump/generating units with a total generating capacity of 1,062 megawatts; (8) a substation; and (9) a 2.66-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 2,761,000,000 megawatt-hours (MWh), which would be sold to theTennessee Valley Authority.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Boston, MA 02114; phone (978) 283–2822.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed

electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14125–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19070 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–513–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

July 20, 2011.

Take notice that on July 11, 2011, Tennessee Gas Pipeline Company (Tennessee Gas), 1001 Louisiana Street, Houston, Texas 77002, filed an application pursuant to Section 7(b), Parts 157.205, and 157.208, of the Commission's regulations under the Natural Gas Act (NGA) for authorization to increase the maximum allowable operating pressure (MAOP) of a seven-mile, four-inch lateral designated as the Tomball Lateral (''Line 21B–100'') in Harris County, Texas, and to thereafter operate Line 2B–100 up to the higher MAOP. Specifically, Tennessee Gas proposes to increase the MAOP of Line 2B–100 from 678 psig to 750 psig, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3299, or by e-mail at *tom.joyce@elpaso.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Dated: July 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–19078 Filed 7–27–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9444–9]

Meeting of the Mid-Atlantic/Northeast Visibility Union Executive Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing the Meeting of the Mid-Atlantic/Northeast Visibility Union (MANE–VU) Executive Board. This meeting will deal with matters relative to Regional Haze, visibility improvement, and criteria pollutants within the MANE–VU region.

DATES: The meeting will be held on September 15, 2011 starting at 9 a.m. (EDT).

Location: The Equinox, 3567 Main Street, Manchester Village, Vermont 06254; 802–362–4700.

FOR FURTHER INFORMATION CONTACT: For questions regarding Meeting Specifics, Documents and Press Inquiries Contact: Kromeklia Bryant, Ozone Transport Commission (OTC), 444 North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508–3840; *e-mail: ozone@otcair.org; Web site: http://www.otcair.org/manevu/.*

SUPPLEMENTARY INFORMATION: MANE–VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers.

Type of Meeting: Open.

Agenda: Copies of the final agenda are available from the OTC office at (202) 508–3840; by *e-mail: ozone@otcair.org* or via the MANE–VU Web site at *http://www.otcair.org/manevu/.*

Dated: July 18, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–19137 Filed 7–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9444–8]

Public Water Supply Supervision Program; Program Revision for the State of Alaska

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Approval.

SUMMARY: Notice is hereby given that the State of Alaska has revised its approved State Public Water Supply Supervision Primacy Program. Alaska has adopted regulations analogous to the EPA's Ground Water Rule. The EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, the EPA intends to approve these State program revisions. By approving these rules, the EPA does not intend to affect the rights of federally recognized Indian tribes within ''Indian country'' as defined by 18 U.S.C. 1151, nor does it intend to

limit existing rights of the State of Alaska.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by August 29, 2011 to the Regional Administrator at the EPA address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 29, 2011, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on August 29, 2011. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, at the following offices:

Alaska Department of Environmental Conservation (ADEC), 410 Willoughby, Suite 303, Juneau, Alaska 99801;

ADEC South Central Regional Office, 555 Cordova Street, Anchorage, Alaska 99501;

ADEC Northern Regional Office, 610 University Avenue, Fairbanks, Alaska 99709–3643 and between the hours of 9 a.m.–12 p.m. and 1–4 p.m. at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA Region 10, Drinking Water Unit, by mail at the Seattle address given above, by telephone at (206) 553–1890, or by e-mail at *marshall.wendy@epa.gov.*

Authority: Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Part 142 of the National Primary Drinking Water Regulations.

Dated: July 20, 2011.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2011–19123 Filed 7–27–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, August 2, 2011, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–19297 Filed 7–26–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2011–17878) published on pages 41794 and 41795 of the issue for Friday, July 15, 2011.

Under the Federal Reserve Bank of Richmond heading, the entry for BCSB Bancorp, Inc., Baltimore, Maryland, is revised to read as follows:

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *BCSB Bancorp, Inc.,* Baltimore, Maryland, to become a bank holding company by acquiring 100 percent of the voting shares of Baltimore County Savings Bank Federal Savings Bank, Baltimore, Maryland, upon its conversion to a state-chartered commercial bank.

In connection with this application, applicant has also applied to engage in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Comments on this application must be received by August 11, 2011.

Board of Governors of the Federal Reserve System, July 25, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–19099 Filed 7–27–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Report and Recommendations on the Usefulness and Limitations of the Murine Local Lymph Node Assay for Potency Categorization of Chemicals Causing Allergic Contact Dermatitis in Humans

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), HHS.

ACTION: Availability of Report and Recommendations; Notice of Transmittal.

SUMMARY: The NTP Interagency Center for the Evaluation of Alternative Test Methods (NICEATM) announces availability of an Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) test method evaluation report (TMER) that includes recommendations on the usefulness and limitations of the local lymph node assay (LLNA) for categorizing the potency of substances with the potential to cause allergic contact dermatitis (ACD) as strong skin sensitizers. Strong skin sensitizers are substances considered to have a significant potential for causing ACD.

ICCVAM recommends that a specific potency criterion for positive results from ACD safety testing using the LLNA can be used to further categorize some chemicals and products as strong skin sensitizers. However, since this criterion only identified approximately half of strong human skin sensitizers, ICCVAM concluded that failure to meet this criterion cannot be used as the basis for determining that a substance is not a strong skin sensitizer. Therefore, the potency criterion should only be used in a screening approach where chemicals that meet the criterion could be categorized as strong skin sensitizers, but chemicals that do not meet the criterion would require additional testing or information to determine that they are not strong skin sensitizers.

The report and recommendations have been transmitted to Federal agencies for their review and response to ICCVAM in accordance with the provisions of the ICCVAM

Authorization Act of 2000 (42 U.S.C. 285l-2).

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov. Courier address:* NICEATM, NIEHS, Room 2034, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

In 1999, ICCVAM evaluated the validation status of the LLNA as a stand-alone alternative test method to the guinea pig maximization test (GPMT) and the Buehler test (BT) for assessing the ACD hazard potential of products and chemicals (NIH Publication No. 99–4494; *http://iccvam.niehs.nih.gov/methods/immunotox/llna_PeerPanel98.htm*). Based on this evaluation, ICCVAM recommended the LLNA as a valid substitute for traditional guinea pig test methods for most testing situations. The U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, and the U.S. Consumer Product Safety Commission (CPSC) subsequently accepted the method as a valid substitute for the GPMT and BT. The Organisation for Economic Co-operation and Development (OECD) also adopted the LLNA as OECD Test Guideline 429 in 2002. Using the LLNA instead of guinea pig tests reduces and refines (decreases or eliminates pain and distress) animal use for ACD safety testing.

In 2007, the CPSC nominated several new versions and applications of the LLNA to ICCVAM for evaluation of their scientific validity for regulatory testing purposes (*http://iccvam.niehs.nih.gov/methods/immunotox/llnadocs/CPSC_LLNA_nom.pdf*). The nomination requested that ICCVAM assess (1) the validation status of the LLNA limit dose procedure (*i.e.,* the reduced LLNA); (2) the modified LLNA test method protocols that do not require the use of radioactive materials; (3) the use of the LLNA to test mixtures, aqueous solutions, and metals; and (4) the use of the LLNA as a stand-alone assay to determine ACD potency categories for hazard classification and labeling. NICEATM published a **Federal Register** notice (72 FR 27815) requesting public comments on (1) The appropriateness and relative priority of the CPSC-nominated LLNA activities, (2) the nomination of scientists to serve on an international independent scientific peer review panel, and (3) the submission of data from LLNA testing that related to the CPSC-nominated LLNA activities as well as corresponding data from human and other animal studies. ICCVAM assigned these activities a high priority after considering comments from the public and endorsement from the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). NICEATM and ICCVAM compiled comprehensive draft background review documents (BRDs), released them for public comment in January 2008 (73 FR 1360), and convened a public meeting of the panel on March 4–6, 2008, to peer review the draft documents. The panel evaluated the information in the draft BRDs as to whether it supported draft ICCVAM recommendations for (1) Test method usefulness and limitations, (2) updated standardized test method protocols, and (3) proposed future studies. The panel considered public comments made at the meeting, as well as public comments submitted in advance of the meeting, before concluding their deliberations. The panel's report was made available in May 2008 (73 FR 29136) for public comment. The draft ICCVAM BRDs, draft ICCVAM test method recommendations, the panel's report, and all public comments were made available to SACATM for comment at its meeting on June 18–19, 2008 (73 FR 25754).

After considering the conclusions and recommendations of the panel, comments from SACATM, and public comments, ICCVAM forwarded final recommendations for the reduced LLNA (NIH Publication No. 09–6439; *http://iccvam.niehs.nih.gov/methods/immunotox/LLNA-LD/TMER.htm*), LLNA performance standards, and the updated LLNA test method protocol (NIH Publication No. 09–7357; *http://iccvam.niehs.nih.gov/methods/immunotox/llna_PerfStds.htm*) to Federal agencies in September 2009 (74 FR 50212). Agency responses are available on the NICEATM–ICCVAM Web site.

NICEATM subsequently obtained additional data and/or information and revised the draft BRDs for both the traditional and nonradioactive LLNA methods. ICCVAM released the revised draft BRDs and the revised draft ICCVAM test method recommendations to the public for comment and announced a second meeting of the panel (74 FR 8974). The panel reconvened in public session on April 28–29, 2009, to review the ICCVAM-revised draft documents and to finalize its conclusions and recommendations on the current validation status of the nonradioactive test methods and the expanded uses of the LLNA for pesticide formulations and other products. The panel's report was made available for public comment in June 2009 (74 FR 26242). The revised draft ICCVAM BRDs, revised draft ICCVAM test method recommendations, the panel's report, and all public comments were made available to SACATM for comment on June 25–26, 2009 (74 FR 19562).

After considering the conclusions and recommendations of the panel, comments from SACATM, and public comments, along with the recommendations of an OECD Expert Consultation on the LLNA convened in October and December 2009, ICCVAM finalized and forwarded test method recommendations on two nonradioactive versions of the LLNA, LLNA: 5-Bromo-2′-deoxyuridine-Enzyme-Linked Immunosorbent Assay (BrdU–ELISA) (NIH Publication No. 10–7552; *http://iccvam.niehs.nih.gov/methods/immunotox/llna-ELISA/TMER.htm*) and LLNA: Daicel Adenosine Triphosphate (DA) (NIH Publication No. 10–7551; *http://iccvam.niehs.nih.gov/methods/immunotox/llna-DA/TMER.htm*), and expanded uses of the LLNA for pesticide formulations and other products (NIH Publication No. 10–7512; *http://iccvam.niehs.nih.gov/methods/immunotox/llna-app.htm*) to Federal agencies in June 2010 (75 FR 37443). Agency responses to these ICCVAM test method recommendations are available on the NICEATM–ICCVAM Web site.

The ICCVAM TMER, *Usefulness and Limitations of the Murine Local Lymph Node Assay for Potency Categorization of Chemicals Causing Allergic Contact Dermatitis in Humans* (NIH Publication No. 11–7709), describes ICCVAM's recommendations for using LLNA test results to categorize the potency of some substances identified as having the potential to cause ACD in humans as strong skin sensitizers. Strong sensitizers are those substances considered to have a significant potential for causing hypersensitivity. ICCVAM recommends that a specific potency criterion for positive results from ACD safety testing using the LLNA can be used to further categorize some chemicals and products as strong skin sensitizers. However, since this criterion only identified approximately half of the strong human skin sensitizers tested, failure to meet this criterion cannot be used as the basis for determining that a substance is not a strong skin sensitizer. Therefore, the potency criterion should only be used in a screening approach where chemicals that meet the criterion

could be categorized as strong skin sensitizers, but chemicals that do not meet the criterion would require additional testing or information to determine that they are not strong skin sensitizers.

The ICCVAM evaluation found that only 52% of the strong human skin sensitizers in the validation database would be identified as strong skin sensitizers using the LLNA potency criterion in the 2009 United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS). Accordingly, chemicals that do not meet the criterion would require additional testing or information to determine that a substance is not a strong human skin sensitizer.

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies applicable to the needs of U.S. Federal agencies. Additional information about NICEATM and ICCVAM can be found on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*).

SACATM was established in response to the ICCVAM Authorization Act [Section 285l–3(d)] and is composed of scientists from the public and private sectors (67 FR 11358). SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

References

ICCVAM. 2011. ICCVAM Test Method Evaluation Report: Usefulness and Limitations of the Murine Local Lymph Node Assay for Potency Categorization of Chemicals Causing Allergic Contact Dermatitis in Humans. NIH Publication No. 11–7709. Research Triangle Park, NC: National Institute of Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/methods/immunotox/llna-ELISA/LLNA-pot/TMER.htm.*

ICCVAM. 2010. ICCVAM Test Method Evaluation Report on the Murine Local Lymph Node Assay: BrdU–ELISA, a Nonradioactive Alternative Test Method to Assess the Allergic Contact Dermatitis Potential of Chemicals and Products. NIH Publication No. 10–7552. Research Triangle Park, NC: National Institute of Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/methods/immunotox/llna-ELISA/TMER.htm.*

ICCVAM. 2010. ICCVAM Test Method Evaluation Report on the Murine Local Lymph Node Assay: DA, a Nonradioactive Alternative Test Method to Assess the Allergic Contact Dermatitis Potential of Chemicals and Products. NIH Publication No. 10–7551. Research Triangle Park, NC: National Institute of Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/methods/immunotox/llna-DA/TMER.htm.*

ICCVAM. 2010. ICCVAM Test Method Evaluation Report on Using the Murine Local Lymph Node Assay for Testing Pesticide Formulations, Metals, Substances in Aqueous Solutions, and Other Products. NIH Publication No. 10–7512. Research Triangle Park, NC: National Institute of Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/methods/immunotox/LLNA-app/TMER.htm.*

ICCVAM. 2009. Recommended Performance Standards: Murine Local Lymph Node Assay. NIH Publication No. 09–7357. Research Triangle Park, NC: National Institute of Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/methods/immunotox/llna_PerfStds.htm.*

ICCVAM. 2009. ICCVAM Test Method Evaluation Report. The Reduced Murine Local Lymph Node Assay: An Alternative Test Method Using Fewer Animals to Assess the Allergic Contact Dermatitis Potential of Chemicals and Products. NIH Publication No. 09–6439. Research Triangle Park, NC: National Institute of Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/methods/immunotox/LLNA–LD/TMER.htm.*

ICCVAM. 1999. The Murine Local Lymph Node Assay: A Test Method for Assessing the Allergic Contact Dermatitis Potential of Chemicals/Compounds. The Results of an Independent Peer Review Evaluation Coordinated by ICCVAM and NICEATM. NIH Publication No. 99–4494. Research Triangle Park, NC: National Institute of Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/methods/immunotox/llna_PeerPanel98.htm.*

Dated: July 14, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–18639 Filed 7–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11EM]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC, or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Survey of Primary Care Policies for Managing Patients with High Blood Pressure, High Cholesterol, or Diabetes—New—Division of Heart Disease and Stroke Prevention (DHDSP), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cardiovascular disease is a leading cause of death and disability for men and women in the United States, among the most costly health problems facing our nation today, and among the most preventable. Risk factors for cardiovascular disease include high blood pressure and high cholesterol. Because over 50% of diabetics have high blood pressure, high cholesterol, or both conditions, the optimal systems to treat people with hypertension, high cholesterol, or diabetes are interrelated.

In 2005, CDC's Division for Heart Disease and Stroke Prevention (DHDSP) began developing evaluation indicators that reflect evidence-based outcomes from policy, systems, and environmental changes related to heart disease and stroke prevention. However, many of the indicators for short-term policy and systems changes do not have readily available data sources. This is particularly true for outcomes related to health care systems changes.

In 2011, CDC proposes to conduct a new information collection, the National Survey of Primary Care Policies for Managing Patients with High Blood Pressure, High Cholesterol, or Diabetes (NSPCP). The survey will be targeted to practice managers of non-federally run primary care physician practices that include at least one family practitioner or at least one physician specializing in internal medicine. Respondents will be drawn from a nationally representative sample of physician practices. The NSPCP survey instrument will undergo cognitive testing before dissemination.

The Web-based NSPCP will collect information about physician practices' use of evidence-based systems, including multidisciplinary team approaches for chronic disease treatment, electronic health records (EHR) with features appropriate for treating patients with chronic disease (*e.g.,* clinical decision supports, patient registries), and patient follow-up mechanisms. A follow-up survey will be conducted two years after completion of the baseline NSPCP. Approximately 900 physicians will participate in each cycle of data collection (baseline and follow-up). On an annualized basis, approximately 600 physicians will participate in the NSPCP per year, and 1,333 practices will be screened for participation.

Information from both cycles of data collection will be compared to monitor changes in health systems and dissemination of health systems technology. Results will be used by primary care practices to inform their systems for managing patients with chronic conditions and to improve the quality of care delivered. Results will be used by CDC to improve technical assistance to public health partners.

OMB approval is requested for three years. Participation in the NSPCP is voluntary, and all responses will be de-identified. There are no costs to respondents other than their time. The total estimated annualized burden hours are 317.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hr)
Physician	Cognitive Testing Interview Guide	5	1	75/60
Medical Secretary	NSPCP Screener	1,333	1	5/60
Physician	NSPCP	600	1	20/60

Dated: July 22, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–19109 Filed 7–27–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11CD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Tourette Syndrome National Education and Outreach Program—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This program will collect program evaluation data from participants of educational workshops and recipients of educational resources on Tourette Syndrome (TS) conducted by the Tourette Syndrome Association in a cooperative agreement with the CDC.

TS is an inherited, neurobiological movement disorder characterized by involuntary motor and vocal tics that typically manifest during childhood. The exact number of people with TS is unknown. Data from the National Survey of Children's Health 2007 resulted in an estimate that 3 out of every 1,000 U.S. children (about 148,000) 6 through 17 years of age had been diagnosed with TS. Higher prevalence estimates obtained from community studies likely mean that there are a significant number of individuals who have TS, but who have not been diagnosed. TS is three to four times more common among males than females.

It is estimated that tens of thousands or Americans with TS either go undiagnosed or the clinical care they do receive is inadequate. There is no known cure. The disorder may express itself with mild symptoms for some, and severe symptoms for others. Depending on the severity and duration, tic symptoms may also be diagnosed as chronic motor or vocal tic disorder, transient tic disorder, and tic disorder not otherwise specified. TS is associated with a high rate of co-morbid conditions.

There is a lack of accurate treatment information among the medical community as well as the general public, and a limited number of expert physicians—all resulting in significant under-diagnosis, misdiagnosis, and inadequate treatment with scant follow-up care. Children also meet with stigma

and inadequate responses in educational settings, limiting their educational and social success.

To address these issues, the Tourette Syndrome Association has developed educational workshops and materials to improve the recognition and awareness of TS diagnosis, treatment, co-occurring conditions, and quality of life for those impacted by TS. Health education programs have been developed for 3 groups of audiences: Health professionals, education professionals, and people with TS and their families. The format includes general education programs for the 3 groups, as well as two more in-depth medical training programs for physicians on TS and on the Comprehensive Behavioral Intervention for Tics (CBIT) treatment. In addition, a range of professional health education materials in various formats have been developed as educational resources and will be disseminated.

CDC requests OMB approval to collect program evaluation information from workshop participants and recipients of educational materials over a three-year period. Participants of the workshops and recipients of educational resources will be completing program evaluation forms to provide information on whether the workshop or resource met the educational goals. The information will be used to improve future workshops.

There are no costs to respondents other than their time. The total estimated annual burden hours are 277.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Response burden (in hours)
Health professionals	Medical Program Evaluation	1,200	1	2/60	40
Health professionals	Physician Training Retreat Pre-test	50	1	3/60	3
	Physician Training Retreat Post-test	50	1	3/60	3
	Physician Training Retreat 3-Month Follow-up.	30	1	2/60	1
Health professionals	CBIT Program Evaluation	500	1	2/60	17
	CBIT Pre-test	500	1	3/60	25
	CBIT Post-test	500	1	3/60	25
	CBIT Online Program Evaluation	50	1	1/60	1
	CBIT Program 3-Month Follow-up	300	1	1/60	5
Health professionals	Medical Resource Dissemination	210	1	2/60	7
Teachers/Educators	Education Program Evaluation	1,200	1	2/60	40
	Education Program Pre-test	800	1	3/60	40
	Education Program Post-test	800	1	3/60	40
	Education Resource Dissemination	210	1	2/60	7
Public	Family/Public Education Program Evaluation.	250	1	2/60	8
	Family/Public Medical Program Evaluation.	250	1	2/60	8
	Family Resource Dissemination	200	1	2/60	7

Dated: July 22, 2011.

Daniel L. Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–19107 Filed 7–27–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–535 LIHEAP Quarterly Allocation Estimates.

OMB No.: 0970–0037.

Description: The LIHEAP Quarterly Allocation Estimates, ACF Form-535 is a one-page form that is sent to 50 State grantees and to the District of Columbia. It is also sent to Tribal Government grantees that receive over $1 million annually for the Low Income Home Energy Assistance Program (LIHEAP). Grantees are asked to complete and submit the form in the 4th quarter of each year. The data collected on the form are grantees estimates of obligations they expect to make each quarter for the upcoming fiscal year for the LIHEAP program. This is the only method used to request anticipated distributions of the grantees LIHEAP funds. The information is used to develop apportionment requests to OMB and to make grant awards based on grantees anticipated needs. Information collected on this form is not available through any other Federal source. Submission of the form is voluntary.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Quarterly Allocation Estimate, ACF–535	55	1	0.25	13.75

Estimated Total Annual Burden Hours: 13.75

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance, Officer.

[FR Doc. 2011–19104 Filed 7–27–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Abuse Prevention Program.

OMB No.: 0970–0155.

Description: The Program Instruction, prepared in response to the enactment of the Community-Based Grants for the Prevention of Child Abuse and Neglect (administratively known as the Community Based Child Abuse Prevention Program, (CBCAP), as set forth in Title II of Public Law 111–320, Child Abuse Prevention and Treatment Act Amendments of 2010, provides direction to the States and Territories to accomplish the purposes of (1) supporting community-based efforts to develop, operate, expand, enhance and coordinate initiatives, programs, and activities to prevent child abuse and neglect; (2) supporting the coordination of resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect, and; (3) fostering an understanding, appreciation, and knowledge of diverse populations in order to effectively prevent child abuse and neglect. This Program Instruction contains information collection requirements that are found in Pub. L. 111–320 at sections 201; 202; 203; 205; 206; and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Report	52	1	24	1,248

Estimated Total Annual Burden Hours: 3,328.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285,*E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–19108 Filed 7–27–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0510]

Agency Information Collection Activities; Proposed Collection; Comment Request; Substances Prohibited From Use in Animal Food or Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements for substances prohibited for use in animal food or feed.

DATES: Submit electronic or written comments on the collection of information by September 26, 2011.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of

Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Substances Prohibited From Use in Animal Food or Feed—21 CFR Part 589 (OMB Control Number 0910–0627)—(Extension)

The final rule on bovine spongiform encephalopathy (BSE) (73 FR 22720, April 25, 2008) prohibits the use of certain cattle origin materials in the food or feed of all animals to help prevent the spread of BSE in U.S. cattle. BSE is a progressive and fatal neurological disorder of cattle that results from an unconventional transmissible agent. BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). All TSEs affect the central nervous system of infected animals. These measures will further strengthen existing safeguards against BSE.

Description of Recordkeeping for Respondents: Rendering facilities, medicated feed manufacturers, livestock feeders.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours	Total operating and maintenance costs
589.2001 (c)(2)(vi) and (c)(3)(i)	175	1	175	20	3,500	$59,500
589.2001 (c)(2)(ii)	50	1	50	20	1,000	17,000
589.2001 (c)(3)(i)(A)	175	1	175	26	4,550	80,580
Total					9,050	157,080

[1] There are no capital costs associated with this collection of information.

The number of recordkeepers times the number of records per recordkeeper equals total annual records. Total annual records times average burden per recordkeeper equals total hours.

Description of Respondents for Reporting; The final rule on BSE (73 FR 22720) included a provision that exempts cattle materials prohibited in animal feed (CMPAF) from designated countries from the prohibition on its use in animal feed (21 CFR 589.2001(b)(1)(vi)). A foreign country seeking this designation will submit a written request to FDA that includes a variety of information about the countries' BSE status (21 CFR 589.2001(f)). FDA estimates that 10 countries could submit a request to FDA to be exempted from CMPAF restrictions.

FDA estimates the reporting burden for this information collection as follows:

TABLE 2—ESTIMATED ONE-TIME AND RECURRING REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
589.2001(b)(1) [2]	10	1	10	80	800
589.2001(f)	10	1	10	26	260

[1] There are no capital costs or operating costs associated with the collection of information.
[2] One-time burden.

Dated: July 20, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–19139 Filed 7–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0157]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 29, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0389. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review—(OMB Control Number 0910–0389)—[Extension]

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the FD&C Act. The guidance discusses collections of information that are specified under section 506 of the FD&C Act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collection of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the Agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the FD&C Act, an applicant who seeks fast track designation is required to submit a request to the Agency showing that the product: (1) Is intended for a serious or life-threatening condition and (2) has the potential to address an unmet medical need. Mostly, the Agency expects that information to support a designation request will have been gathered under existing provisions of the FD&C Act, the PHS Act, or the implementing regulations. If such information has already been submitted to the Agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the Agency makes a fast track designation, a sponsor or applicant may submit a premeeting package that may include additional information supporting a request to participate in certain fast track programs. The premeeting package serves as background information for the meeting and should support the intended objectives of the meeting. As with the request for fast track designation, the Agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the FD&C Act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (*i.e.,* foreign studies) and information to support a request for accelerated approval. If such information has already been submitted to FDA, the information may be summarized in the premeeting package. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the FD&C Act, a sponsor must submit sufficient clinical data for the Agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that are not required under section 506(c) of the FD&C Act or any other provision of the FD&C Act. All forms referred to in the guidance have current OMB approval: FDA Forms 1571 (OMB control number 0910–0014), 356h (OMB control number 0910–0338), and 3397 (OMB control number 0910–0297).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the FD&C Act. The Agency estimates the total annual number of respondents submitting

requests for fast track designation to the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research is approximately 97, and the number of requests received is approximately 118 annually. FDA estimates that the number of hours needed to prepare a request for fast track designation is approximately 60 hours per request.

Not all requests for fast track designation may meet the statutory standard. Of the requests for fast track designation made per year, the Agency granted 77 requests from 64 respondents, and for each of these granted requests a premeeting package was submitted to the Agency. FDA estimates that the preparation hours are approximately 100 hours per premeeting package.

In the **Federal Register** of April 13, 2011 (76 FR 20679), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Reporting activity	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
Designation Requests	97	1.22	118	60	7,080
Premeeting Packages	64	1.20	77	100	7,700
Total					14,780

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 19, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–19138 Filed 7–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0511]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and ''Lookback''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information requirements relating to FDA's regulation of current good manufacturing practice (CGMP) and related regulations for blood and blood components; and requirements for donor testing, donor notification, and ''lookback.''

DATES: Submit either electronic or written comments on the collection of information by September 26, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and ''Lookback'' (OMB Control Number 0910–0116)—Extension

All blood and blood components introduced or delivered for introduction into interstate commerce are subject to section 351(a) of the Public Health Service Act (PHS Act) (42 U.S.C. 262). Section 351(a) of the PHS Act requires that manufacturers of biological products, which include blood and blood components intended for further manufacture into injectable products, have a license, issued upon a demonstration that the product is safe, pure, and potent and that the manufacturing establishment meets all

applicable standards, including those prescribed in the FDA regulations designed to ensure the continued safety, purity, and potency of the product. In addition, under section 361 of the PHS Act (42 U.S.C. 264), by delegation from the Secretary of Health and Human Services, FDA may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.

Section 351(j) of the PHS Act states that the Federal Food, Drug, and Cosmetic Act (FD&C Act) also applies to biological products. Blood and blood components for transfusion or for further manufacture into injectable products are drugs, as that term is defined in section 201(g)(1) of the FD&C Act (21 U.S.C. 321(g)(1)). Because blood and blood components are drugs under the FD&C Act, blood and plasma establishments must comply with the substantive provisions and related regulatory scheme of the FD&C Act. For example, under section 501 of the FD&C Act (21 U.S.C. 351(a)), drugs are deemed ''adulterated'' if the methods used in their manufacturing, processing, packing, or holding do not conform to CGMP and related regulations.

The CGMP regulations (part 606 (21 CFR Part 606)) and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The public health objective in testing human blood donors for evidence of infection due to communicable disease agents and in notifying donors is to prevent the transmission of communicable disease. For example, the ''lookback'' requirements are intended to help ensure the continued safety of the blood supply by providing necessary information to users of blood and blood components and appropriate notification of recipients of transfusion who are at increased risk for transmitting human immunodeficiency virus (HIV) or hepatitis C virus (HCV) infection.

The information collection requirements in the CGMP, donor testing, donor notification, and ''lookback'' regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enable FDA to perform meaningful inspections.

The recordkeeping requirements serve preventive and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of certain information that may require immediate corrective action.

Under the reporting requirements, § 606.170(b), in brief, requires that facilities notify FDA's Center for Biologics Evaluation and Research (CBER), as soon as possible after confirming a complication of blood collection or transfusion to be fatal. The collecting facility is to report donor fatalities, and the compatibility testing facility is to report recipient fatalities. The regulation also requires the reporting facility to submit a written report of the investigation within 7 days after the fatality. In fiscal year 2010, FDA received 76 of these reports.

Section 610.40(c)(1)(ii) (21 CFR 610.40(c)(1)(ii)), in brief, requires that each donation dedicated to a single identified recipient be labeled as required under § 606.121 and with a label containing the name and identifying information of the recipient.

Section 610.40(g)(2) requires an establishment to obtain written approval from FDA to ship human blood or blood components for further manufacturing use prior to completion of testing for evidence of infection due to certain communicable disease agents.

Section 610.40(h)(2)(ii)(A), in brief, requires an establishment to obtain written approval from FDA to use or ship human blood or blood components found to be reactive by a screening test for evidence of certain communicable disease agent(s) or collected from a donor with a record of a reactive screening test. Furthermore, § 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D), in brief, require an establishment to label certain reactive human blood and blood components with the appropriate screening test results, and, if they are intended for further manufacturing use into injectable products, to include a statement on the label indicating the exempted use specifically approved by FDA. Finally, § 610.40(h)(2)(vi) requires each donation of human blood or blood components, excluding Source Plasma, that tests reactive by a screening test for syphilis and is determined to be a biological false positive to be labeled with both test results.

Section 610.42(a) (21 CFR 610.42(a)) requires a warning statement ''indicating that the product was manufactured from a donation found to be reactive by a screening test for evidence of infection due to the identified communicable disease agent(s)'' in the labeling for medical devices containing human blood or a blood component found to be reactive by a screening test for evidence of infection due to a communicable disease agent(s) or syphilis.

In brief, §§ 610.46 and 610.47 (21 CFR 610.46 and 610.47) require blood collecting establishments to establish, maintain, and follow an appropriate system for performing HIV and HCV prospective ''lookback'' when: (1) A donor tests reactive for evidence of HIV or HCV infection; or (2) the collecting establishment becomes aware of other reliable test results or information indicating evidence of HIV or HCV infection (''prospective lookback'') (see §§ 610.46(a)(1) and 610.47(a)(1)). The requirement for ''an appropriate system'' requires the collecting establishment to design standard operating procedures (SOPs) to identify and quarantine all blood and blood components previously collected from a donor who later tests reactive for evidence of HIV or HCV infection, or when the collecting establishment is made aware of other reliable test results or information indicating evidence of HIV or HCV infection. Within 3 calendar days of the donor testing reactive by an HIV or HCV screening test or the collecting establishment becoming aware of other reliable test results or information, the collecting establishment must, among other things, notify consignees to quarantine all identified previously collected in-date blood and blood components (§§ 610.46(a)(1)(ii)(B) and 610.47(a)(1)(ii)(B)) and, within 45 days, notify the consignees of supplemental test results, or the results of a reactive screening test if there is no available supplemental test that is approved for such use by FDA (§§ 610.46(a)(3) and 610.47(a)(3)).

Consignees also must establish, maintain, and follow an appropriate system for performing HIV and HCV ''lookback'' when notified by the collecting establishment that they have received blood and blood components previously collected from donors who later tested reactive for evidence of HIV or HCV infection, or when the collecting establishment is made aware of other reliable test results or information indicating evidence of HIV or HCV infection in a donor (§§ 610.46(b) and 610.47(b)). This provision for a system requires the consignee to establish SOPs for, among other things, notifying transfusion recipients of blood and blood components, or the recipient's physician of record or legal

representative, when such action is indicated by the results of the supplemental (additional, more specific) tests or a reactive screening test if there is no available supplemental test that is approved for such use by FDA, or if under an investigational new drug application (IND) or an investigational device exemption (IDE), is exempted for such use by FDA. The consignee must make reasonable attempts to perform the notification within 12 weeks of receipt of the supplemental test result or receipt of a reactive screening test result when there is no available supplemental test that is approved for such use by FDA, or if under an IND or IDE, is exempted for such use by FDA (§§ 610.46(b)(3) and 610.47(b)(3)).

Section 630.6(a) (21 CFR 630.6(a)) requires an establishment to make reasonable attempts to notify any donor who has been deferred as required by § 610.41 (21 CFR 610.41), or who has been determined not to be eligible as a donor. Section 630.6(d)(1) requires an establishment to provide certain information to the referring physician of an autologous donor who is deferred based on the results of tests as described in § 610.41.

Under the recordkeeping requirements, § 606.100(b), in brief, requires that written SOPs be maintained for all steps to be followed in the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and further manufacturing purposes. Section 606.100(c) requires the review of all records pertinent to the lot or unit of blood prior to release or distribution. Any unexplained discrepancy or the failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded.

In brief, § 606.110(a) provides that the use of plateletpheresis and leukaphesis procedures to obtain a product for a specific recipient may be at variance with the additional standards for that specific product if, among other things, the physician certifies in writing that the donor's health permits plateletpheresis or leukapheresis. Section 606.110(b) requires establishments to request prior approval from CBER for plasmapheresis of donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are approved under OMB control number 0910–0338 and, therefore, are not reflected in tables 1 and 2 of this document.

Section 606.151(e) requires that SOPs for compatibility testing include procedures to expedite transfusion in life-threatening emergencies; records of all such incidents must be maintained, including complete documentation justifying the emergency action, which must be signed by a physician.

So that each significant step in the collection, processing, compatibility testing, storage, and distribution of each unit of blood and blood components can be clearly traced, § 606.160 requires that legible and indelible contemporaneous records of each such step be made and maintained for no less than 10 years. Section 606.160(b)(1)(viii) requires records of the quarantine, notification, testing and disposition performed under the HIV and HCV ''lookback'' provisions. Furthermore, § 606.160(b)(1)(ix) requires a blood collection establishment to maintain records of notification of donors deferred or determined not to be eligible for donation, including appropriate followup. Section 606.160(b)(1)(xi) requires an establishment to maintain records of notification of the referring physician of a deferred autologous donor, including appropriate followup.

Section 606.165, in brief, requires that distribution and receipt records be maintained to facilitate recalls, if necessary.

Section 606.170(a) requires records to be maintained of any reports of complaints of adverse reactions arising as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. When an investigation concludes that the product caused the transfusion reaction, copies of all such written reports must be forwarded to and maintained by the manufacturer or collecting facility.

Section 610.40(g)(1) requires an establishment to appropriately document a medical emergency for the release of human blood or blood components prior to completion of required testing.

In addition to the CGMP regulations in part 606, there are regulations in part 640 (21 CFR Part 640) that require additional standards for certain blood and blood components as follows: Sections 640.3(a)(1), (a)(2), and (f); 640.4(a)(1) and (a)(2); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described in tables 1 and 2 of this document.

Respondents to this collection of information are licensed and unlicensed blood establishments that collect blood and blood components, including Source Plasma and Source Leukocytes, inspected by FDA, and other transfusion services inspected by the Centers for Medicare and Medicaid Services (CMS). Based on information received from CBER's database systems, there are approximately 31 licensed Source Plasma establishments with multiple locations and approximately 1,675 registered blood collection establishments, for an estimated total of 1,706 establishments. Of these establishments, approximately 1,032 perform plateletpheresis and leukopheresis. These establishments annually collect approximately 38.3 million units of Whole Blood and blood components, including Source Plasma and Source Leukocytes, and are required to follow FDA ''lookback'' procedures. In addition, there are another 4,059 establishments that fall under the Clinical Laboratory Improvement Amendments of 1988 (formerly referred to as facilities approved for Medicare reimbursement) that transfuse blood and blood components.

The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and FDA experience. Based on information received from industry, we estimate that there are approximately 21 million donations of Source Plasma from approximately 2 million donors and approximately 17.3 million donations of Whole Blood, including approximately 261,000 (approximately 1.5 percent of 17.3 million) autologous donations, from approximately 10.9 million donors. Assuming each autologous donor makes an average of 2 donations, FDA estimates that there are approximately 130,500 autologous donors.

FDA estimates that approximately 5 percent (3,600 of the 72,000 donations that are donated specifically for the use of an identified recipient would be tested under the dedicated donors' testing provisions in § 610.40(c)(1)(ii)).

Under § 610.40(g)(2) and (h)(2)(ii)(A), Source Leukocytes, a licensed product that is used in the manufacture of interferon, which requires rapid preparation from blood, is currently shipped prior to completion of testing for evidence of certain communicable disease agents. Shipments of Source Leukocytes are pre-approved under a biologics license application and each shipment does not have to be reported

to the Agency. Based on information from CBER's database system, FDA receives less than one application per year from manufacturers of Source Leukocytes. However, for calculation purposes, we are estimating one application annually.

Under § 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D), FDA estimates that each manufacturer would ship an estimated 1 unit of human blood or blood components per month (12 per year) that would require 2 labels; one as reactive for the appropriate screening test under § 610.40(h)(2)(ii)(C), and the other stating the exempted use specifically approved by FDA under § 610.40(h)(2)(ii)(D). According to CBER's database system, there are approximately 40 licensed manufacturers that ship known reactive human blood or blood components.

Based on information we received from industry, we estimate that approximately 18,000 donations: (1) Annually test reactive by a screening test for syphilis, (2) are determined to be biological false positives by additional testing, and (3) are labeled accordingly (§ 610.40(h)(2)(vi)).

Human blood or a blood component with a reactive screening test, as a component of a medical device, is an integral part of the medical device, *e.g.,* a positive control for an in vitro diagnostic testing kit. It is usual and customary business practice for manufacturers to include on the container label a warning statement that identifies the communicable disease agent. In addition, on the rare occasion when a human blood or blood component with a reactive screening test is the only component available for a medical device that does not require a reactive component, then a warning statement must be affixed to the medical device. To account for this rare occasion under § 610.42(a), we estimate that the warning statement would be necessary no more than once a year.

FDA estimates that approximately 3,500 repeat donors will test reactive on a screening test for HIV. We also estimate that an average of three components was made from each donation. Under § 610.46(a)(1)(ii)(B) and (a)(3), this estimate results in 10,500 (3,500 × 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 10,500 (3,500 × 3) notifications to consignees of subsequent test results. We estimate an average of 10 minutes per notification of consignees.

We estimate that § 610.46(b)(3) will require 4,059 consignees to notify transfusion recipients, their legal representatives, or physicians of record an average of 0.35 times per year resulting in a total number of 1,755 (585 confirmed positive repeat donors × 3) notifications. Under § 610.46(b)(3), we also estimate 1 hour to accommodate the time to gather test results and records for each recipient and to accommodate multiple attempts to contact the recipient.

Furthermore, we estimate that approximately 7,800 repeat donors per year would test reactive for antibody to HCV. Under § 610.47(a)(1)(ii)(B) and (a)(3), collecting establishments would notify the consignee 2 times for each of the 23,400 (7,800 × 3 components) components prepared from these donations, once for quarantine purposes and again with additional HCV test results for a total of 46,800 notifications as an annual ongoing burden. Under § 610.47(b)(3), we estimate that approximately 4,059 consignees would notify approximately 2,050 recipients or their physicians of record annually. Finally, we estimate 1 hour to complete notification.

Based on industry estimates, roughly 13 percent of approximately 10 million potential donors (1.3 million donors) who come to donate annually are determined not to be eligible for donation prior to collection because of failure to satisfy eligibility criteria. It is the usual and customary business practice of approximately 1,675 blood collecting establishments to notify onsite and to explain why the donor is determined not to be suitable for donating. Based on such available information, we estimate that two-thirds (1,117) of the 1,675 blood collecting establishments provided onsite additional information and counseling to a donor determined not to be eligible for donation as usual and customary business practice. Consequently, we estimate that only one-third, or 558, approximately, blood collecting establishments would need to provide, under § 630.6(a), additional information and onsite counseling to the estimated 433,000 (one-third of approximately 1.3 million) ineligible donors.

It is estimated that another 4.5 percent of 10 million potential donors (450,000 donors) are deferred annually based on test results. We estimate that approximately 95 percent of the establishments that collect 99 percent of the blood and blood components notify donors who have reactive test results for HIV, Hepatitis B Virus (HBV), HCV, Human T-Lymphotropic Virus (HTLV), and syphilis as usual and customary business practice. Consequently, 5 percent of the 1,706 establishments (85) collecting 1 percent (4,500) of the deferred donors (450,000) would notify donors under § 630.6(a).

As part of usual and customary business practice, collecting establishments notify an autologous donor's referring physician of reactive test results obtained during the donation process required under § 630.6(d)(1). However, we estimate that approximately 5 percent of the 1,675 blood collection establishments (84) may not notify the referring physicians of the estimated 2 percent of 130,500 autologous donors with the initial reactive test results (2,610) as their usual and customary business practice.

The recordkeeping chart reflects the estimate that approximately 95 percent of the recordkeepers, which collect 99 percent of the blood supply, have developed SOPs as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model standards developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

Under § 606.160(b)(1)(ix), we estimate the total annual records based on the approximately 1.3 million donors determined not to be eligible to donate and each of the estimated 1.75 million (1.3 million + 450,000) donors deferred based on reactive test results for evidence of infection because of communicable disease agents. Under § 606.160(b)(1)(xi), only the 1,675 registered blood establishments collect autologous donations and, therefore, are required to notify referring physicians. We estimate that 4.5 percent of the 130,500 autologous donors (5,872) will be deferred under § 610.41, which in turn will lead to the notification of their referring physicians.

FDA has concluded that the use of untested or incompletely tested but appropriately documented human blood or blood components in rare medical emergencies should not be prohibited. We estimate the recordkeeping under § 610.40(g)(1) to be minimal with one or fewer occurrences per year. The reporting of test results to the consignee in § 610.40(g) does not create a new burden for respondents because it is the usual and customary business practice or procedure to finish the testing and provide the results to the manufacturer responsible for labeling the blood products.

The hours per response and hours per record are based on estimates received from industry or FDA experience with similar recordkeeping or reporting requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
606.170(a)	[5] 288	1.20	346	0.5	173
606.170(b) [2]	76	1	76	20	1,520
610.40(c)(1)(ii)	1,706	2.11	3,600	0.08	288
610.40(g)(2)	1	1	1	1	1
610.40(h)(2)(ii)(A)	1	1	1	1	1
610.40(h)(2)(ii)(C) and (h)(2)(ii)(D)	40	12	480	0.2	96
610.40(h)(2)(vi)	1,706	10.55	18,000	0.08	1,440
610.42(a)	1	1	1	1	1
610.46(a)(1)(ii)(B)	1,675	6.27	10,500	0.17	1,785
610.46(a)(3)	1,675	6.27	10,500	0.17	1,785
610.46(b)(3)	4,059	0.43	1,755	1	1,755
610.47(a)(1)(ii)(B)	1,675	13.97	23,400	0.17	3,978
610.47(a)(3)	1,675	13.97	23,400	0.17	3,978
610.47(b)(3)	4,059	0.51	2,050	1	2,050
630.6(a) [3]	558	775.98	433,000	0.08	34,640
630.6(a) [4]	85	52.94	4,500	1.5	6,750
630.6(d)(1)	84	31.07	2,610	1	2,610
Total					62,851

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).
[3] Notification of donors determined not to be eligible for donation based on failure to satisfy eligibility criteria.
[4] Notification of donors deferred based on reactive test results for evidence of infection due to communicable disease agents.
[5] Five percent of establishments that fall under the Clinical Laboratory Improvement Amendments of 1988 that transfuse blood and components and FDA-registered blood establishments ($0.05 \times 4,059 + 1,706$).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
606.100(b) [2]	[5] 288	1	288	24	6,912
606.100(c)	[5] 288	10	2,880	1	2,880
606.110(a) [3]	[6] 52	1	52	0.5	26
606.151(e)	[5] 288	12	3,456	0.08	276
606.160 [4]	[5] 288	1,329.86	383,000	0.75	287,250
606.160(b)(1)(viii)					
HIV consignee notification	1,675	12.54	21,000	0.17	3,570
	4,059	5.17	21,000	0.17	3,570
HCV consignee notification	1,675	27.94	46,800	0.17	7,956
	4,059	11.53	46,800	0.17	7,956
HIV recipient notification	4,059	0.43	1,755	0.17	298
HCV recipient notification	4,059	0.51	2,050	0.17	349
606.160(b)(1)(ix)	1,706	1,025.79	1,750,000	0.05	87,500
606.160(b)(1)(xi)	1,675	3.51	5,872	0.05	294
606.165	[5] 288	1,329.86	383,000	0.08	30,640
606.170(a)	[5] 288	12	3,456	1	3,456
610.40(g)(1)	1,706	1	1,706	0.50	853
Total					443,786

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).
[3] The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).
[4] The recordkeeping requirements in §§ 640.3(a)(2) and (f); 640.4(a)(2); 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.71(b)(1); 640.72; and 640.76(a) and (b), which address the maintenance of various records, are included in the estimate for § 606.160.
[5] Five percent of establishments that fall under the Clinical Laboratory Improvement Amendments of 1988 that transfuse blood and components and FDA-registered blood establishments ($0.05 \times 4,059 + 1,706$).
[6] Five percent of plateletpheresis and leukopheresis establishments ($0.05 \times 1,032$).

Dated: July 22, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–19040 Filed 7–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0318]

Determination That INVERSINE (Mecamylamine Hydrochloride) Tablet and Six Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the seven drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Olivia Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6308, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is withdrawn from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved; (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved; and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicant, FDA withdrew approval of NDA 021039 for AGENERASE (amprenavir) Oral Solution in the **Federal Register** of July 21, 2010 (75 FR 42455).)

Application No.	Drug	Applicant
NDA 010251	INVERSINE (mecamylamine hydrochloride (HCl)) Tablet, 2.5 milligrams (mg).	Targacept, Inc., 200 East 1st St., Suite 300, Winston Salem, NC 27101–4165
NDA 011552	STELAZINE (trifluoperazine HCl) Injection, Equivalent to (EQ) 2 mg base/milliliter (mL).	GlaxoSmithKline, 5 Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709–3398
NDA 011552	STELAZINE (trifluoperazine HCl) Oral Concentrate, EQ 10 mg base/mL.	Do.
NDA 016798	SINEQUAN (doxepin HCl) Capsules, EQ 10 mg base, EQ 25 mg base, EQ 50 mg base, EQ 75 mg base, EQ 100 mg base, and EQ 150 mg base.	Pfizer Laboratories, Division of Pfizer Inc., 235 East 42nd St., New York, NY 10017
NDA 017516	SINEQUAN (doxepin HCl) Oral Concentrate, EQ 10 mg base/mL.	Do.
NDA 019201	VOLTAREN (diclofenac sodium) Delayed-Release Tablet, 75 mg.	Novartis Pharmaceuticals Corp., One Health Plaza, East Hanover, NJ 07936–1080
NDA 021039	AGENERASE (amprenavir) Oral Solution, 15 mg/mL	GlaxoSmithKline

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 25, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–19110 Filed 7–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Center for Drug Evaluation and Research, Approach to Addressing Drug Shortage; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop regarding the approach of the Center for Drug Evaluation and Research (CDER) to addressing drug shortages. This public workshop is intended to provide information for, and to gain additional insight from, professional societies, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons about the causes and impact of drug shortages, and possible strategies for preventing or mitigating drug shortages. The input from this public workshop will help in developing topics for further discussion with industry and professional societies, and other stakeholders and may help the Agency to better address drug shortage issues.

Date and Time: The public workshop will be held on September 26, 2011, from 8:30 a.m. to 4:30 p.m.

Location: The public workshop will be held at 10903 New Hampshire Ave., Bldg. 31, rm. 1503 B and C (Great Room), Silver Spring, MD 20993. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings.'' Please note that visitors to the White Oak Campus must enter through Building 1. (*http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*).

Contact Persons: Christine Moser or Lori Benner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6202, Silver Spring, MD 20993–0002, 301–796–1300 or 301–796–1600.

Registration: To register electronically, e-mail registration information (including name, title, firm name, address, telephone, and fax number) to *dsworkshop@fda.hhs.gov* by September 19, 2011. Persons without access to the Internet can call Christine Moser at 301–796–1300 or Lori Benner at 301–796–1300 to register. Registration is free for the public workshop. Seating will be available on a first-come, first-served basis. Persons needing a sign language interpreter or other special accommodations should notify Christine Moser or Lori Benner (see Contact) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop regarding CDER's current approach to addressing drug shortages. Given the increasing number of drug shortages and the attendant safety concerns for the public's health, it is important to discuss the causes of these shortages, as well as strategies to address them. This public workshop will focus on providing information and gaining perspective from professional societies, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons. The following topics will be discussed:

- How CDER becomes aware of drug shortages,
- Reasons behind drug shortages,
- Determination of medically necessary products,
- CGMP (current good manufacturing practice) and other compliance issues,
- Actions taken when a drug shortage occurs, and
- Outcomes of mitigated drug shortages.

Additional discussion will include the public health impact of drug shortages and what measures can be taken to prevent the occurrence of a drug shortage. The Agency encourages professional societies, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, Rm. 6–30, Rockville, MD 20857.

Dated: July 22, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–19031 Filed 7–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0294]

Reprocessing of Reusable Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is considering factors affecting the reprocessing of reusable medical devices, including reprocessing quality, device design as it relates to the reprocessing of reusable medical devices, reprocessing methodologies, validation methodologies, and health care facility best practices. This is part of an ongoing effort to address patient exposure to inadequately reprocessed reusable medical devices. FDA would like to provide another opportunity for public comment by establishing a docket to receive information and comments from the public on factors affecting the reprocessing of reusable medical devices.

DATES: Submit either electronic or written comments by September 26, 2011.

ADDRESSES: You may submit comments, identified with the FDA docket number found in brackets in the heading of this document, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and

docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Carol Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5437, Silver Spring, MD 20993, 301–796–3241, *Carol.Krueger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA has launched an effort focused on the reprocessing of reusable medical devices, including reprocessing quality, device design as it relates to the reprocessing of reusable medical devices, reprocessing methodologies, validation methodologies, and health care facility best practices. As part of this effort, FDA held a 2-day public workshop on June 8 and 9, 2011, at FDA's White Oak Conference Center in Silver Spring, MD. In the **Federal Register** of May 2, 2011 (76 FR 24495), FDA announced the workshop and provided background information. The workshop focused on medical devices that are intended for reuse after reprocessing, rather than third-party reprocessing of single-use-only medical devices. FDA has a Web cast of the workshop available for viewing at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm252205.htm.* The workshop included a public comment session.

On the workshop Web site (*http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm252205.htm*), FDA stated that electronic comments regarding the public workshop could be submitted to *http://www.regulations.gov* until June 29, 2011. FDA inadvertently failed to state this in the May 2, 2011, workshop notice. Hence, *http://www.regulations.gov* was not open for submission of electronic comments. FDA is publishing this notice to provide another opportunity for public comment on reprocessing of reusable medical devices issues.

Various types of medical devices used in health care settings, from surgical suction tips to complex endoscopes, are designed and labeled for use on multiple patients. Thousands of reusable medical devices requiring reprocessing are used every day in diagnosing and treating patients. FDA has received a number of reports of patient exposure to inadequately reprocessed medical devices and subsequent health care-associated infections (HAIs).

A definitive causal relationship between reusable device reprocessing and any patient infection is difficult to establish because inadequate reprocessing is not often investigated as a cause when an HAI is diagnosed. Several reports, however, contained evidence suggesting that inadequate reprocessing may have been a contributing factor in microbial transmission and subsequent infection. Ensuring adequate reprocessing of reusable medical devices could reduce the incidence of HAIs associated with the use of a reprocessed medical device. This will decrease the public health burden of HAIs in terms of morbidity, mortality, and cost.

The adequate reprocessing of reusable medical devices is a critically important factor in protecting patient safety. Inadequate reprocessing between patients can result in the retention of blood, tissue, and other biological debris (soil) in reusable medical devices. This soil can allow microbes to survive the high level disinfection or sterilization process, potentially resulting in HAIs or other adverse patient outcomes. FDA receives reports of problems in all steps of medical device reprocessing,[1] including cleaning, disinfecting, and sterilizing. Manufacturers, health care facilities, health care professionals, and FDA all have a role in reducing the risk of inadequately reprocessed medical devices. To help address these issues, FDA has engaged partners at the Centers for Disease Control and Prevention, the Centers for Medicaid and Medicare Services, the Veterans Health Administration, and The Joint Commission, who bring valuable expertise in disease control and health care practices to this effort.

[1] A more comprehensive description of reprocessing steps is available in FDA's draft guidance ''Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling'' at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/ReprocessingofReusableMedicalDevices/default.htm.*

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

To assist interested parties, we are asking for public comment on the following issues:

1. What are the nature, scope, and impact of reusable medical device reprocessing problems that have been observed? What are the causes of these problems?

2. What factors or criteria to facilitate reprocessing should be considered when designing reusable medical devices? How can the design process be improved to better incorporate cleanability as a design endpoint?

3. What factors or criteria should be considered when developing reprocessing instructions and validation protocols for devices to be used in various health care environments (*e.g.,* hospital, ambulatory surgical center, physician's office), based on the draft guidance document, ''Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling,'' available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/ReprocessingofReusableMedicalDevices/default.htm?*

4. What factors or criteria should be considered by a health care facility when developing reusable device reprocessing procedures and quality assurance processes?

5. How should problems with reusable medical device reprocessing be identified, reported, and acted upon by industry and users?

Dated: July 25, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–19098 Filed 7–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0013]

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has conducted a reorganization to modify its structure, to align similar functions under common executive leadership, and to reduce and change the reporting relationships to the Agency head. The reorganization creates four ''directorates'' within which most of FDA's activities will reside—Administrative operations, food and veterinary medicine, medical products and tobacco, and foreign and domestic regulatory operations. However, this restructuring will not change the basic form of FDA's programs, which will continue to reside in the Agency's seven operating Centers and the Office of Regulatory Affairs. It is intended to provide a more efficient span of control for executive leadership and to organize like activities together, not to change the essential programmatic activities under which FDA implements the Federal Food, Drug, and Cosmetic Act.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Holden, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4239, Silver Spring, MD 20993–0002, 301–796–4750.

I. Summary

Part D, Chapter D–B (Food and Drug Administration), Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 60 FR 56605, November 9, 1995, 64 FR 36361, July 6, 1999, 72 FR 50112, August 30, 2007, 74 FR 41713, August 18, 2009) is amended to reflect the restructuring of the Office of the Commissioner and other components, FDA that was approved by the Secretary of Health and Human Services on July 8, 2011 as follows. This reorganization is explained in Staff Manual Guide 1111.1, 1118.1, 1140.1, 1114.1, 1117.1, 1160.1, 1180.1, and 1115.1.

Under Part D, FDA, the Office of the Commissioner has been restructured as follows:

DA. ORGANIZATION—FDA is headed by the Commissioner of Food and Drugs (the Commissioner) and includes the following organizational units that report to the Commissioner:

Office of the Commissioner
Office of the Counselor to the Commissioner
Office of Legislation
Office of Policy and Planning
Office of External Affairs
Office of the Chief Scientist
Office of Operations
Office of Foods
Office of Medical Products and Tobacco
Office of Global Regulatory Operations and Policy
Office of Women's Health
Office of Minority Health

The following organizations remain substantively unchanged: Center for Veterinary Medicine, Center for Food Safety and Applied Nutrition, Center for Devices and Radiological Health, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research, Center for Tobacco Products, National Center for Toxicological Research, Office of Regulatory Affairs, Office of International Programs, and Office of Special Medical Programs.

However, some organizations will have different reporting relationships under the new organizational structure, as follows:

Office of the Commissioner

Headed by the Commissioner, the Office of the Commissioner will be comprised of the Office of the Counselor to the Commissioner, the Office of Legislation, the Office of Policy and Planning, the Office of External Affairs, the Office of the Chief Scientist, the Office of Women's Health, and the Office of Minority Health. Those offices will remain unchanged, with the exception of the realignment of functions of the Office of Budget from the Office of Policy, Planning and Budget (OPPB) to the Office of Operations, and the renaming of OPPB to the Office of Policy and Planning. The administrative functions that were formerly within the Office of the Commissioner will be relocated to the new Office of Operations. Although the National Center for Toxicological Research will remain unchanged as an operating Center, the Chief Scientist will assume direct line authority over the Center.

Office of Operations

Directed by a Chief Operating Officer (COO), the Office of Operations will assume the functions previously overseen by the Deputy Commissioner for Administration. The COO will, on behalf of the Commissioner, have Agency-wide authority for strengthening the management of business programs and operations of the Agency. The COO oversees day-to-day management issues, effective implementation of Congressional and Commissioner priorities and initiatives, and the delivery of quality services by the Agency and its Centers. Under this new structure, the COO will have direct line authority over the Office of Information Management, the Office of Management, the Office of Equal Employment Opportunity, and a new Office of Finance, Budget and Acquisition (which will receive the Office of Budget from the former Office of Policy, Planning and Budget). The Offices overseen by the COO were previously located within the Office of the Commissioner.

Office of Foods

This office, headed by a Deputy Commissioner for Foods is unchanged. The Center for Veterinary Medicine and Center for Food Safety and Applied Nutrition remain within this Office and are unchanged. This Deputy Commissioner will continue the goal established in the 2009 creation of this Office to integrate all of FDA's food-related functions into one seamless enterprise, as well as provide executive direction to the two Centers under the Deputy Commissioner's direction.

Office of Medical Products and Tobacco

This new Office will be comprised of four Centers that previously reported directly to the Commissioner—the Center for Devices and Radiological Health, the Center for Biologics Evaluation and Research, the Center for Drug Evaluation and Research, and the Center for Tobacco Products. Directed by the Deputy Commissioner for Medical Products and Tobacco, it will also oversee the Office of Special Medical Programs, which contains four Offices that were previously in the Office of the Commissioner (the Office of Orphan Product Development, the Office of Pediatric Therapeutics, the Office of Combination Products, and the Office of Good Clinical Practice). The newly created position of Deputy Commissioner for Medical Products and Tobacco will have direct line authority over the four medical product Centers and the special medical programs and, as such, will provide advice and counsel to the Commissioner on all FDA medical product and tobacco-related programs and issues. The Centers and special medical programs remain unchanged in this reorganization.

Office of Global Regulatory Operations and Policy

This new office, directed by a Deputy Commissioner for Global Regulatory Operations and Policy, will be

comprised of two existing organizations that will otherwise remain unchanged—the Office of Regulatory Affairs and the Office of International Programs. In addition to exercising direct line authority over those two existing Offices, this new Deputy Commissioner will provide executive oversight, strategic leadership, and policy direction to FDA's domestic and international product quality and safety efforts, including global collaboration, global data-sharing, development and harmonization of standards, field operations, compliance, and enforcement activities.

II. Delegations of Authority

Pending further delegation, directives, or orders by the Commissioner, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

III. Electronic Access

Persons interested in seeing the complete Staff Manual Guide can find it on FDA's Web site at: *http://www.fda.gov/AboutFDA/ReportsManualsForms/StaffManualGuides/default.htm*

Dated: July 25, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–19111 Filed 7–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Review and Qualification of Clinical Outcome Assessments; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss measurement principles for clinical outcome assessments (COAs) for use in clinical trials for new drugs. COAs include patient-reported outcome (PRO) measures, clinician-reported outcome (ClinRO) measures, and observer-reported outcome (ObsRO) measures. This public workshop is intended to provide information for and gain perspectives from patient advocates, health care providers, researchers, regulators, individuals from academia, industry, and other interested persons on various aspects of the development and implementation of COAs in the evaluation of treatment benefit. Regulatory review issues regarding context of use and documentation of the measurement properties of a COA will be covered during panel discussions. The input from this public workshop will be published in the form of a white paper or a series of manuscripts.

DATES: *Date and Time:* The public workshop will be held on October 19, 2011, from 8:30 a.m. to 5 p.m. Participants are encouraged to arrive early to ensure time for parking and routine security check before the workshop.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* Attendees are responsible for their own accommodations.

The public workshop will also be available to be viewed online via Web cast at *https://collaboration.fda.gov/coaworkshop/.* Persons interested in participating by Web cast must register online by October 17, 2011.

Contact Person: Shauna Shupe, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6417, Silver Spring, MD 20993–0002, 301–796–0900, *e-mail: Shauna.Shupe@fda.hhs.gov.*

Registration: Registration is free for the public workshop. Interested parties are encouraged to register early because space is limited to 150 attendees. Workshop space will be filled in order of receipt of registration. Those accepted into the workshop will receive confirmation. Registration will close after the workshop is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 7:30 a.m.

To register electronically, e-mail registration information (including name, title, firm name, address, telephone, and FAX number) to *COAworkshop@fda.hhs.gov.* For those without Internet access, please call Shauna Shupe (see *Contact Person)* to register.

If you need special accommodations due to a disability, please contact Shauna Shupe at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The Center for Drug Evaluation and Research (CDER) reviews COAs including PRO measures, (ClinRO) measures, and ObsRO measures when submitted with an investigational new drug application, a new drug application, or a biologics licensing application. The FDA guidance for industry entitled ''Patient-Reported Outcome Measures: Use in Medical Product Development to Support Labeling Claims,'' available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM193282.pdf,* explains how FDA reviews PRO measures.

CDER also reviews a COA when submitted for qualification as a drug development tool (DDT). Qualification of a COA is a regulatory determination that the COA is well-suited for a specific context of use in drug development. Following a public announcement of the qualification decision by FDA, the COA will be publicly available for use in any appropriate drug development program. Because the qualification process is separate from the drug marketing application process, qualification is conducive to public-private partnerships engaging in this COA development effort. Such collaborative approaches may increase the efficiency of COA development when more than one entity is interested in the use of a COA for a specific context of use. The FDA draft guidance for industry entitled ''Qualification Process for Drug Development Tools,'' available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM230597.pdf,* provides the draft process for CDER participation in the consultation, advice, and qualification review for COAs and other DDTs.

This workshop will focus on FDA review principles specific to all type of COAs, *i.e.,* PRO, ClinRO, and ObsRO measures. More specifically, the workshop will provide researchers involved in the drug development process with information on the following topics concerning FDA review of COAs for treatment benefit evaluation:

- COA measurement principles;
- COA nomenclature;

• Determination of COA context of use;

• Practical considerations to develop and implement COAs to document treatment benefit; and

• Description of interagency collaborations and public-private partnerships for COA development.

The Agency encourages patient advocates, health care providers, researchers, regulators, individuals from academia, industry, and other interested persons to attend this public workshop.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Transcripts will also be available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm206132.htm* approximately 45 days after the workshop.

The workshop helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by government Agencies to small businesses.

Dated: July 20, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–19140 Filed 7–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Direct Service and Contracting Tribes Funding Opportunity

Announcement Type: Limited Competition.

Funding Announcement Number: HHS–2011–IHS–NIHOE–0001.

Catalog of Federal Domestic Assistance Number: 93.933.

Key Dates:

Application Deadline Date: August 2, 2011.

Review Date: August 8, 2011.

Earliest Anticipated Start Date: August 15, 2011.

I. Funding Opportunity Description

Statutory Authority: The Indian Health Service (IHS) is accepting applications for two limited competition cooperative agreements.

The IHS award includes the following three components, as described in this announcement: ''Retained Tribal Shares of Line Item 128 of the IHS Tribal Shares Table'' (Tribal Shares), ''Health Care Policy Analysis and Review'' and ''Tribal Leaders Diabetes Committee'' (TLDC). The IHS award is authorized under the Snyder Act, codified at 25 U.S.C. 13.

The CMS award, through IHS, includes the following component, as described in this announcement: ''CMS''. The CMS award is authorized under section 1110 of the Social Security Act, codified at 42 U.S.C. 1310, via an Intra-Departmental Delegation of Authority from CMS to IHS dated April 15, 2011 (IDDA–11–92), to permit obligation of funding for CMS for analyses, research and studies to address the potential and actual impact of CMS programs on American Indian/Alaska Native (AI/AN) beneficiaries and the health care system serving these beneficiaries.

IHS will be administering the CMS award pursuant to the Economy Act, codified at 31 U.S.C. 1535. It is the intention of IHS and CMS that one entity will receive both awards. CMS and IHS will concur on the final decision as to who will receive the CMS award. Each award is funded by each respective agency's appropriation. The awardee is responsible for accounting for each of the two awards separately and must provide two separate financial reports (one for each award), as indicated in Section VI. Award Administration Information, Number 4. Reporting Requirements, Item A. Progress Reports and Item B. Financial Reports of this announcement.

This program is described at 93.933 in the Catalog of Federal Domestic Assistance (CFDA).

Background: Outreach and education programs (program) carry out health program objectives in the AI/AN community in the interest of improving Indian health care for all 565 Federally-recognized Tribes, including Tribal governments operating their own health care delivery systems through self-determination contracts with the IHS and Tribes that continue to receive health care directly from the IHS. This program addresses health policy and health programs issues and disseminates educational information to all AI/AN Tribes and villages. These awards require that public forums be held at Tribal educational consumer conferences to disseminate changes and updates in the latest health care information. These awards also require that regional and national meetings be coordinated for information dissemination as well as the inclusion of planning and technical assistance and health care recommendations on behalf of participating Tribes to ultimately inform IHS and CMS based on Tribal input through a broad based consumer network.

Purpose: The purpose of these awards is to further IHS and CMS missions and goals related to providing quality health care to the AI/AN community through outreach and education efforts with the sole outcome of improving Indian health care. The following health services components will be awarded:

IHS Cooperative Agreement Components

1. Tribal Shares
2. Health Care Policy Analysis and Review
3. TLDC

CMS Cooperative Agreement Component

1. CMS

II. Award Information

Type of Award: Cooperative Agreements.

Estimated Funds Available: The total amount of funding identified for fiscal year (FY) 2011 is approximately $1,250,000 to fund the two cooperative agreements for one year. $300,000 is estimated for outreach, education, and support to Tribes who have elected to leave their Tribal Shares with the IHS (this amount could vary based on Tribal Share assumptions; Tribal Shares funding will be awarded in partial increments based on availability and amount of funding); $100,000 for the Health Care Policy Analysis and Review; $250,000 associated with providing legislative education, outreach and communications support to the IHS TLDC and to facilitate Tribal consultation on the Special Diabetes Program for Indians (SDPI); and $600,000 for CMS. The awards under this announcement *are subject to the availability of funds.*

Anticipated Number of Awards: Two awards are anticipated as follows: One IHS award comprised of the following three components: Tribal Shares; Health

Care Policy Analysis and Review; and TLDC; and one CMS award comprised of the following component: CMS.

IHS Award

A. Tribal Shares portion of funding. Tribal Shares dollar amounts available for distribution to the awardee are determined each fiscal year by the IHS Office of Finance and Accounting; *e.g.,* estimated initial set-aside amount and final determination of remaining balances after Tribes and Tribal Organizations (T/TO) have either contracted or compacted Programs, Functions, Services, and Activities from IHS. FY 2011 is estimated at $300,000 total costs which may vary based on Tribal Shares assumption.

B. Health Care Policy Analysis and Review in the amount of $100,000.

C. TLDC in the amount of $250,000.

Project Period: August 15, 2011 with completion by August 14, 2012.

CMS Award

A. CMS in the amount of $600,000.

Project Period: August 15, 2011 with completion by August 14, 2012.

IHS Award Activities

1. Tribal Shares Funding Is Utilized for Outreach, Education, and Support to Tribes

The awardee is expected to:

1. Host an Annual Consumer Conference to disseminate changes and updates on health care information relative to AI/AN.

2. Host mid-year consumer conference(s) as appropriate to disseminate changes and updates on health care information relative to AI/AN.

3. Conduct regional and national meeting coordination as appropriate.

4. Conduct health care information dissemination as appropriate.

5. Coordinate planning and technical assistance needs on behalf of T/TO to IHS and CMS.

6. Convey health care recommendations on behalf of T/TO to IHS and CMS.

2. Health Care Policy Analysis and Review

This funding component requires the awardee to provide IHS with research and analysis of the impact of CMS programs on AI/AN beneficiaries and the health care delivery system that serves these beneficiaries. The awardee will perform in-depth health care policy analysis and review of issues related to CMS rules and regulations and the impact on IHS beneficiaries. This is to include, but not be limited to, a special emphasis and focus on the health care policy issues related to the special provisions for Indians in the Affordable Care Act (ACA).

The awardee will produce measurable outcomes to include:

1. Analytical reports, policy review and recommendation documents—The products will be in the form of written and/or electronic files that contain useful analysis relative to current and proposed health care policy and reform to be reported on a monthly or quarterly basis during the IHS and CMS teleconferences and face-to-face meetings with hard copies submitted to the Director, Office of Resource, Access and Partnerships, IHS.

2. Educational and informational materials to be disseminated by the awardee and communicated to IHS and Tribal health program staff during monthly and quarterly conferences, the Annual Consumer Conference, meetings and training sessions. This can be in the form of power point presentations, informational brochures, and/or handout materials.

3. TLDC and Related Support Activities

A. Coordination of travel and travel/per diem reimbursement of 12 TLDC members and five Technical Advisors to attend four quarterly TLDC meetings in accordance with the approved TLDC charter. Amount: $150,000.

Activities to be performed by the awardee include:

- Communicate directly with TLDC members (and alternates, as necessary) to arrange travel to TLDC meetings in accordance with the approved charter.
- Address and track all inquiries regarding travel arrangements and reimbursements for TLDC members and advisors (and alternates, as necessary) to attend planned TLDC meetings.
- Coordinate sharing of logistical information to TLDC members and advisors for meeting location and lodging with the IHS Division of Diabetes Treatment and Prevention (DDTP) contractor(s).
- Prepare and distribute reimbursement forms with clear instructions, in advance of the meeting and serve as the point of contact for communicating any additional travel information that is required.
- Establish a process to collect reimbursement forms from TLDC members and communicate this process to them.
- Establish and maintain a database on travel reimbursements and related meeting costs.
- Track and report all related travel and per diem costs.
- Coordinate and effect the timely reimbursement of approved participants' expenses within 30 days of the receipt of the claim forms.
- Maintain an active TLDC e-mail directory in order to assist the DDTP and the TLDC with broadcasting related meeting, travel and reimbursement information and soliciting related feedback.
- Include identified DDTP staff on all electronic correspondence to TLDC members.

B. Provide education, outreach and communications support to communicate with Tribal leaders and Indian organizations about the progress of the TLDC and the SDPI grant program. Amount: $70,000.

Activities to be performed by the awardee include:

- Gather and provide information on policy issues that are relevant to diabetes and related conditions in AI/ANs for the purpose of keeping TLDC membership up-to-date on such legislative information.
- Assist the TLDC with communication to Tribes, Tribal leaders, Indian organizations, and others about the success and outcomes of the SDPI and best practice information, to date.
- Coordinate sharing of TLDC information with national non-profit organizations such as the Juvenile Diabetes Research Foundation (JDRF) and the American Diabetes Association (ADA) for improving outreach to Tribes and Tribal communities as well as education and outreach to non-Indian communities in America about AI/ANs living with diabetes.
- Participate in the development of meeting agendas for face-to-face and conference call meetings under the direction of the TLDC and DDTP.
- Support the DDTP activities at mid-year meetings and the Annual Consumer Conference, which will include a plenary presentation on diabetes and up to four workshops through the payment of presenter fees, registration fees and exhibit fees.
- Support presentations that address diabetes and related chronic disease issues among AI/ANs at national Tribal health care conferences through payment of presenter fees and costs for no more than three separate trips.

C. Support collaborative efforts aimed at addressing obesity and AI/AN youth Annual Amount: $30,000.

Activities to be performed by the awardee include:

- Address the findings in the report generated at the National Indian Health Board (NIHB)/IHS Obesity Prevention and Strategies in Native Youth Meeting held December 1, 2009 (contact DDTP for this report).

○ Reconvene childhood obesity workgroup to review report cited above, review action steps and begin planning process.

CMS Award Activities

1. Centers for Medicare and Medicaid Services (CMS) in the amount of $600,000.

CMS Research Projects

CMS is funding five research activities/projects for FY 2011 in the amount of $600,000, subject to the availability of funding.

The research projects are as follows:

(1) *CMS Regulations/Initiatives Impact Analysis Project Objective: $200,000*—Assess the impact of the ACA through an analysis of CMS regulations and CMS initiatives that have a potential impact or effect on IHS, Tribal and Urban (I/T/U) providers and AI/AN beneficiaries. The objective is to determine and monitor the level of AI/AN participation in the CMS regulatory process and assess whether such participation contributes to the understanding of how CMS-related provisions in the ACA impact the financing and delivery of health care in the Indian health care system. Specific tasks include:

- Review the **Federal Register** to identify ACA CMS-related regulations and policies impacting I/T/U providers and prepare factual analysis on the potential impact on I/T/U providers and AI/AN beneficiaries.
- Analyze the impact of CMS regulations and CMS health reform initiatives on AI/AN access to Medicare, Medicaid and CHIP programs.
- Submit to the CMS Tribal Technical Advisory Group (TTAG) a bi-weekly status report of regulations and policies reviewed and commented on; such status report shall include a brief summary of the regulation, and a concise description of the impact of the regulation on I/T/U providers and AI/AN beneficiaries.
- Prepare for the CMS Tribal Affairs Group/Office of Public Engagement quarterly reports and an annual report which summarizes the impacts of the ACA CMS-related regulations and initiatives on provision of health care in the I/T/U system and AI/AN beneficiaries.

(2) *Data Research and Analysis Project Objective: $250,000*—Refine inventory and analysis of AI/AN demographic, enrollment, and utilization data through coordinated review of CMS, IHS, Social Security Administration (SSA), Census and other data resources to develop strategies that make CMS data systems capable of reporting AI/AN enrollment, service utilization, health status and payment data from the Medicare, Medicaid and CHIP programs to facilitate program planning and evaluation, performance measurement, health status monitoring, and targeted enrollment efforts. Coordinate and perform data analysis activities consistent with Health Insurance Portability and Accountability Act rules. Specific tasks include:

- Refine understanding of current data collection and reporting requirements and capabilities of the Medicare system and develop proposals for additional data collection and/or coordination of current efforts to ensure that the data accurately reflects enrollment and utilization of program services, and propose system changes to improve analytic capabilities.
- Refine proposals for protocols that accurately reflect appropriate collection of ethnicity data on national basis.
- Develop research protocols to determine rates of racial misclassification in current Medicaid data, determine difference in rates of Medicaid enrollment and services utilization between Medicaid racially identified AI/ANs and IHS AI/AN Active Users and other recipients, and analyze determinants which may cause differences in Medicaid use and payments for Medicaid racially identified AI/ANs and IHS AI/AN Active Users and other recipients.
- Prepare Medicare and Medicaid/CHIP annual reports that include findings from the analysis of the Medicare, Medicaid, and CHIP data, identifies gaps in data collection, identifies shortcomings in system interactions, proposes CMS/IHS/SSA data interface protocols, and makes specific recommendations on additional data systems improvements.
- Propose and analyze approaches necessary to change and augment data collection systems and other information needed to support all reporting required under the ACA, Children's Health Insurance Program Reauthorization Act (CHIPRA) and American Recovery and Reinvestment Act (ARRA), and propose reporting mechanisms and protocols for such reporting.

(3) *CMS Day and other Research Education Activities Project Objective: $100,000*—Provide a national forum and educational opportunity for sharing the results of CMS-sponsored research and education and outreach efforts with Tribal leadership, Tribal program directors and staff, Tribal beneficiaries and IHS leadership and program staff to enhance information sharing between CMS and the Indian health care system. Specific tasks include:

- Within 30 business days after the effective date of the CMS cooperative agreement award, participate in a conference call or meeting with CMS and IHS to clarify the goals and objectives of a CMS Day during the Annual Consumer Conference and to discuss the agenda for CMS Day.
- Within ten business days after initial meeting, forward to the IHS and CMS Project Officers for approval a preliminary plan that includes methodology for surveying Tribes or other methodologies to determine the most appropriate ways to share CMS information and make use of CMS Day and a preliminary plan for meeting logistics.
- Collaborate with the TTAG throughout the planning phase to ensure their input is obtained on the agenda and other meeting developments.
- Make all necessary arrangements with the convention site to acquire and ensure ample conference rooms, audio-visual equipment, and appropriate room set-ups for this one day CMS meeting.
- Extend the invitation to any Tribal participants who are identified as part of the survey/information gathering process to determine who should participate in the CMS Day and the best methods for further information sharing.
- Meet periodically with CMS and IHS to discuss progress for the CMS Day and incorporate all changes recommended by the agencies.
- Provide periodic progress updates.
- Prepare the final draft CMS Day agenda that incorporates recommendations from CMS, IHS and the TTAG.
- Include up to 40 CMS staff and presenters to permit key staff to participate in the Conference and present on research findings and conduct outreach related activities on CMS Day.
- Develop and disseminate evaluation forms after each session to permit CMS, IHS and the TTAG to determine how to improve current practices and identify other areas where training is needed to determine other areas for research and outreach.

(4) *Strategic Plan Development and Analysis Project Objective: $25,000*—Revise and update the current TTAG Strategic Plan (currently for the years 2010–2015) to include recent new authorities in the ACA and other changes as they have developed through CHIPRA and ARRA. With the recent statutory authorization for a permanent TTAG, this plan reflects the commitment of CMS to ongoing input from the TTAG on the administration of

CMS programs in Indian Country. Specific tasks include:

- Revise and update the current strategic plan to include the years 2012–2018.
- Review objectives stated in the plan for current relevance and update and propose new objectives as appropriate in line with current program status.
- Review and propose new action steps in the plan as appropriate.
- Review and propose new budget categories and priorities to align the plan with the CMS budget process and funding mechanisms.
- Coordinate at least one in-person meeting of the Strategic Plan Subcommittee and conduct in-person interviews with CMS Baltimore headquarters staff as part of the process of updating objectives, action steps and budget alignment.

(5) *Consultation Policy Development Project Objective: $25,000*—Provide research support and approaches/options for the development of a CMS specific Tribal consultation policy. CMS currently does not have an agency specific policy and needs to develop a policy consonant with the recently revised HHS policy. Specific tasks include:

- Review the newly developed HHS policy for impact on individual agencies.
- Review the CMS draft plan developed in 2008 for consonance with the new HHS policy.
- Review all other currently approved HHS Operating Divisions' policies for potential impact and inclusion of approaches in a new CMS policy.
- Survey Tribal leadership for input on how to develop an effective CMS policy.
- Coordinate at least one in-person meeting of the Tribal Consultation Subcommittee and participate in in-person interviews with CMS Baltimore headquarters staff on specific areas such as budget and regulation development to ensure full understanding of all CMS perspectives.
- Prepare an options paper and specific language for all aspects of the proposed CMS Consultation policy.
- Provide ongoing review and updates as CMS policy becomes operational.

Roles of Involvement: In accordance with the Federal Grant and Cooperative Agreement Act of 1977, two cooperative agreements will be awarded, as IHS and CMS will have substantial programmatic involvement as applicable with the awardee in carrying out each of the two awards as noted in the following delineated roles of involvement to further IHS and CMS health program objectives in the AI/AN community with outreach and education efforts in the interest of improving Indian health care.

Cooperative Agreements—Involvement of Parties: The awardee is responsible for the following in addition to fulfilling all requirements noted for each award component: Tribal Shares, Health Care Policy Analysis and Review, TLDC, and CMS:

(1) To facilitate a forum or forums where concerns can be heard that are representative of all Tribal Governments in the area of health care policy analysis and program development for each of the four components listed above;

(2) To assure that health care outreach and education is based on Tribal input through a broad-based consumer network involving the Area Indian Health Boards or Health Board Representatives from each of the twelve IHS Areas;

(3) To establish relationships with other national Indian organizations, with professional groups and with Federal, State and local entities supportive of AI/AN health programs;

(4) To improve and expand access for AI/AN Tribal Governments to all available programs within the HHS;

(5) To disseminate timely health care information to Tribal Governments, AI/AN Health Boards, other national Indian organizations, professional groups, Federal, State, and local entities;

(6) To provide an opportunity for Tribal Government officials to share their concerns, challenges, and recommendations for improving health care delivery through the IHS in forums designed to provide training, technical assistance and appropriate policy discussions; and

(7) To provide periodic dissemination of health care information, including publication of a newsletter four times a year that features articles on health promotion/disease prevention activities and models of best or improving practices, health policy and funding information relevant to AI/AN, *etc.*

Programmatic involvement of IHS staff in IHS and CMS awards: (IHS will be administering the CMS award pursuant to the Economy Act, codified at 31 U.S.C. 1535):

(1) The IHS assigned program official will work in partnership with the awardee in all decisions involving strategy, hiring of personnel, deployment of resources, release of public information materials, quality assurance, coordination of activities, any training, reports, budget and evaluation. Collaboration includes data analysis, interpretation of findings and reporting.

(2) The IHS assigned program official will monitor the overall progress of the awardee's execution of the requirements of the IHS award and the CMS award noted above, as well as their adherence to the terms and conditions of the cooperative agreements. This includes providing guidance for required reports, development of tools, and other products, interpreting program findings and assistance with evaluation and overcoming any slippages encountered.

(3) The IHS assigned program official will work closely with CMS and all participating IHS health services/programs as appropriate per their requirements noted in each of their respective sections.

(4) The IHS assigned program official will coordinate the following for CMS and the participating IHS program offices and staff:

- Discussion and release of any and all special grant conditions upon fulfillment.
- Monthly scheduled conference calls.
- Appropriate dissemination of required reports to each participating program.

(5) IHS will jointly with the awardee plan and set an agenda for the Annual Consumer Conference that:

- Shares the training and/or accomplishments.
- Fosters collaboration among the participating program offices, agencies and/or departments.
- Increases visibility for the partnerships between the awardee IHS, and CMS.

(6) IHS will provide guidance in addressing deliverables and requirements.

(7) IHS will provide guidance in preparing articles for publication and/or presentations of program successes, lessons learned and new findings.

(8) IHS staff will review articles concerning the HHS for accuracy and may, if requested by the awardee, provide relevant articles.

(9) IHS will communicate via monthly conference calls, individual or collective site visits, and monthly meetings.

(10) IHS will provide technical assistance to the awardee as requested.

(11) IHS staff may, at the request of the entity's board, participate on study groups, in board meetings, and may recommend topics for analysis and discussion.

III. Eligibility

1. Eligible Applicants

Eligible applicants include 501(c)(3) non-profit entities who meet the following criteria:

Eligible entities must have demonstrated expertise in the following areas:

- Representing all Tribal governments and providing a variety of services to Tribes, Area Health Boards, Tribal organizations, and Federal agencies, and playing a major role in focusing attention on Indian health care needs, resulting in progress for Tribes.
- Promotion and support of Indian education, and coordinating efforts to inform AI/AN of Federal decisions that affect Tribal government interests including the improvement of Indian health care.
- National health policy and health programs administration.
- Have a national AI/AN constituency and clearly support critical services and activities within the IHS mission of improving the quality of health care for AI/AN people.
- Portray evidence of their solid support of improved healthcare in Indian Country.

IHS will be available to provide technical assistance to eligible applicants that meet the above criteria.

2. Limited Competition Announcement

This is a Limited Competition announcement. The funding levels noted include both direct and indirect costs. Applicant must address both projects. Applicants must provide a separate budget for each award and each budget may not exceed the maximum funding level from each agency. Limited competition refers to a funding opportunity that limits the eligibility to compete to more than one entity but less than all entities.

3. Other Required Information

(1) *Cost Sharing or Matching*—The IHS and CMS awards do not require matching funds or cost sharing.

(2) *Other Requirements*

- If the budgets submitted in the applications exceed the stated dollar amounts outlined within this announcement, the applications will not be considered for funding.
- Applications proposing other projects will be considered ineligible and will be returned to the applicant.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and instructions may be located at *http://www.Grants.gov* or *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding.*

2. Content and Form of Application Submission

Mandatory documents for both the IHS award and the CMS award include:

- SF–424 Application for Federal Assistance.
- SF–424A Budget Information—Non-Construction Programs.
- SF–424B Assurances—Non-Construction Programs.
- Four separate budget narratives, one for each of the four components (not to exceed 2 single-spaced pages each). Four separate project narratives, one for each of the four components (not to exceed 10 single-spaced pages each)
- Health Board resolution (if applicable).
- 501(c)(3) Non-Profit Certification.
- Resumes for all key personnel.
- Position descriptions.
- Disclosure of Lobbying Activities (SF LLL) (if applicable).
- Copy of current negotiated indirect cost (IDC) rate agreement (if applicable).
- Documentation of current OMB A–133 required financial audit, (if applicable). Acceptable forms of documentation include:
  - E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports. These can be found on the FAC Web site.

Public Policy Requirements

All Federal-wide public policies apply to IHS grantees with the exception of the Discrimination policy. All guidelines provided in this announcement apply to both the IHS and CMS awards.

Requirements for Project and Budget Narratives

A. *Project Narratives for each of the four components:* This announcement is for two cooperative agreements; the narrative should be a separate Word document that is no longer than ten pages for each component: IHS will have 30 pages for three components and CMS will have ten pages for one component (see page limitations for each Part noted below) with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limits noted above, only the first 30 pages of the IHS submission and only the first ten pages of the CMS submission will be reviewed. There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative:

Page Limitations for Narrative for Each of the Four Components Submission:
Part A: Program Information (2 page limitation)
Section 1: Needs
Part B: Program Planning and Evaluation (6 page limitation)
Section 1: Program Plans
Section 2: Program Evaluation
Part C: Program Report (2 page limitation)
Section 1: Describe major accomplishments over the last 24 months.
Section 2: Describe major activities over the last 24 months.

B. *Narratives:* A separate budget narrative is required for each component. Each narrative must describe the budget amount(s) requested and match the corresponding scopes of work described in the project narrative. The page limitation should not exceed six pages for the IHS submission and two pages for the CMS submission—two pages per each of the four health services/programs components described in this announcement.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by August 2, 2011 at 12 midnight Eastern Time (ET). Any application received after the application deadline will not be accepted for processing.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Other Limitations—A current recipient cannot be awarded a new, renewal, or competing continuation grant for any of the following reasons:

—The current project is not progressing in a satisfactory manner;
—The current project is not in compliance with program and financial reporting requirements; or
—The applicant has an outstanding delinquent Federal debt. No award shall be made until either:
  - The delinquent account is paid in full; or
  - A negotiated repayment schedule is established and at least one payment is received.

6. Electronic Submission Requirements

Use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find

Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Applicants that receive a waiver of the requirement to submit electronic applications must follow the rules and timelines noted below when they submit a paper application. The applicant must request a waiver, if needed, at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application. Refer to the CCR Section below for further information.

Please be aware of the following:

- Please search for the application package in Grants.gov by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the Division of Grants Management (DGM).
- Page limitation requirements equally apply to paper and electronic applications. After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the Office of Direct Service and Contracting Tribes (ODSCT) will notify applicants that the application has been received.

Technical Challenges

- If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via e-mail at *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.
- If problems persist, contact Paul Gettys, DGM, (*Paul.Gettys@ihs.gov*) at (301) 443–5204.
- Waiver requests must be submitted in writing to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process. If the waiver is approved, the application should be sent directly to the DGM by the deadline date of August 2, 2011. A copy of the approved waiver must be submitted along with the paper application that is mailed to the DGM (Refer to Section VII to obtain the mailing address). Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing or considered for funding and will be returned to the applicant.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the CCR database. Additionally, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. These requirements will ensure use of a universal identifier to enhance the quality of information available to the public. Effective October 1, 2010, all HHS recipients were asked to start reporting information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''). The DUNS number is a unique nine-digit identification number provided by D&B, which uniquely identifies your entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, you may access it through the following Web site *http://fedgov.dnb.com/webform* or to expedite the process, call (866) 705–5711.

Central Contractor Registry

Organizations that have not registered with CCR will need to obtain a DUNS number first and then access the CCR online registration through the CCR home page at *https://www.bpn.gov/ccr/default.aspx* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and your CCR registration will take approximately 3–5 business days to process. Registration with the CCR is free of charge.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and CCR, can be found on the IHS DGM Web site: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

V. Application Review/Information

Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

Evaluation Criteria

Part A: Program Information—Needs (15 points)
Part B: Program Planning and Evaluation
Program Plans—(40 points)
Program Evaluation—(20 points)
Part C: Program Report (15 points)
Budget Narratives (10 points)

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. Points will be assigned to each evaluation criteria adding up to a total of 100 points.

Part A: Program Information

Project Narrative

A. Abstract—One page summarizing project (narrative).

B. Criteria.

(1) INTRODUCTION AND NEED FOR ASSISTANCE (15 points)

(a) Describe the organization's current health, education and technical assistance operations as related to the broad spectrum of health needs of the AI/AN community. Include what programs and services are currently provided (*i.e.,* Federally-funded, State-funded, *etc.*), any memorandums of agreement with other National, Area or local Indian health board organizations. This could also include HHS' agencies that rely on the applicant as the primary gateway organization that is capable of providing the dissemination of health information. Include information regarding technologies currently used (*i.e.,* hardware, software, services, Web

sites, *etc.*), and identify the source(s) of technical support for those technologies (*i.e.,* in-house staff, contractors, vendors, *etc.*). Include information regarding how long the applicant has been operating and its length of association/partnerships with Area health boards, *etc.* [historical collaboration].

(b) Describe the organization's current technical assistance ability. Include what programs and services are currently provided, programs and services projected to be provided, memorandums of agreement with other national Indian organizations that deem the applicant as the primary source of health policy information for AI/AN, memorandums of agreement with other Area Indian health boards, *etc.*

(c) Describe the population to be served by the proposed projects. Are they hard to reach? Are there barriers? Include a description of the number of Tribes who currently benefit from the technical assistance provided by the applicant.

(d) Describe the geographic location of the proposed projects including any geographic barriers experienced by the recipients of the technical assistance to the health care information provided.

(e) Identify all previous IHS cooperative agreement awards received, dates of funding and summaries of the projects' accomplishments. State how previous cooperative agreement funds facilitated education, training and technical assistance nation-wide for AI/ANs and relate the progression of health care information delivery and development relative to the current proposed projects. (Copies of reports will not be accepted.)

(f) Describe collaborative and supportive efforts with national, Area and local Indian health boards.

(g) Explain the need/reason for your proposed projects by identifying specific gaps or weaknesses in services or infrastructure that will be addressed by the proposed projects. Explain how these gaps/weaknesses were discovered. If the proposed projects include information technology (*i.e.,* hardware, software, *etc.*), provide further information regarding measures taken or to be taken that ensure the proposed projects will not create other gaps in services or infrastructure (*i.e.,* IHS interface capability, Government Performance Results Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, *etc.*), if applicable.

(h) Describe the effect of the proposed projects on current programs (*i.e.,* Federally-funded, State-funded, *etc.*) and, if applicable, on current equipment (*i.e.,* hardware, software, services, *etc.*). Include the effect of the proposed projects on planned/anticipated programs and/or equipment.

(i) Describe how the projects relate to the purpose of the cooperative agreement by addressing the following: Identify how the proposed projects will address outreach and education regarding various health data listed, *e.g.,* Health Care Policy Analysis and Review, TLDC, and CMS, *etc.,* dissemination, training, and technical assistance.

Part B: Program Planning and Evaluation

Section 1: Program Plans

(2) PROJECT OBJECTIVE(S), WORKPLAN AND CONSULTANTS (40 points)

(a) Identify the proposed objective(s) for each of the four projects, as applicable, addressing the following:

- Measurable and (if applicable) quantifiable.
- Results oriented.
- Time-limited.

Example: Issue four quarterly newsletters, provide alerts and quantify number of contacts with Tribes.

Goals must be clear and concise. Objectives must be measurable, feasible and attainable for each of the selected projects.

(b) Address how the proposed projects will result in change or improvement in program operations or processes for each proposed project objective for all of the selected projects. Also address what tangible products, if any, are expected from the projects, (*i.e.,* legislative analysis, policy analysis, Annual Consumer Conference, mid-year conferences, summits, *etc.*).

(c) Address the extent to which the proposed projects will provide, improve, or expand services that address the need(s) of the target population. Include a strategic plan and business plan currently in place and that are being used that will include the expanded services. Include the plan(s) with the application submission.

(d) Submit a work plan in the appendix which includes the following information:

- Provide the action steps on a timeline for accomplishing each of the projects' proposed objective(s).
- Identify who will perform the action steps.
- Identify who will supervise the action steps.
- Identify what tangible products will be produced during and at the end of the proposed projects' objective(s).
- Identify who will accept and/or approve work products during the duration of the proposed projects and at the end of the proposed projects.
- Include any training that will take place during the proposed projects and who will be attending the training.
- Include evaluation activities planned in the work plans.

(e) If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

- Educational requirements.
- Desired qualifications and work experience.
- Expected work products to be delivered on a timeline.

If a potential consultant/contractor has already been identified, please include a resume in the Appendix.

(f) Describe what updates will be required for the continued success of the proposed projects. Include when these updates are anticipated and where funds will come from to conduct the update and/or maintenance.

Section 2: Program Evaluation

PROJECT EVALUATION (20 points)

Each proposed objective requires an evaluation component to assess its progression and ensure its completion. Also, include the evaluation activities in the work plan.

Describe the proposed plan to evaluate both outcomes and process. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the work plan and activities of the project.

a. For outcome evaluation, describe:

- What will the criteria be for determining success of each objective?
- What data will be collected to determine whether the objective was met?
- At what intervals will data be collected?
- Who will collect the data and their qualifications?
- How will the data be analyzed?
- How will the results be used?

b. For process evaluation, describe:

- How will each project be monitored and assessed for potential problems and needed quality improvements?
- Who will be responsible for monitoring and managing each project's improvements based on results of ongoing process improvements and their qualifications?
- How will ongoing monitoring be used to improve the projects?
- Describe any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.

• How will the organization document what is learned throughout each of the projects' periods?

c. Describe any evaluation efforts planned after the grant period has ended.

d. Describe the ultimate benefit to the AI/AN population that the applicant organization serves that will be derived from these projects.

Part C: Program Report

Section 1: Describe Major Accomplishments Over the Last 24 Months

Section 2: Describe Major Activities Over the Last 24 Months

ORGANIZATIONAL CAPABILITIES AND QUALIFICATIONS (15 points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the projects outlined in the work plan.

(a) Describe the organizational structure of the organization beyond health care activities, if applicable.

(b) Describe the ability of the organization to manage the proposed projects. Include information regarding similarly sized projects in scope and financial assistance, as well as other cooperative agreements/grants and projects successfully completed.

(c) Describe what equipment (*i.e.*, fax machine, phone, computer, *etc.*) and facility space (*i.e.*, office space) will be available for use during the proposed projects. Include information about any equipment not currently available that will be purchased through the cooperative agreement/grant.

(d) List key personnel who will work on the projects. Include title used in the work plans. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed projects. Resumes must indicate that the proposed staff member is qualified to carry out the proposed projects' activities. If a position is to be filled, indicate that information on the proposed position description.

(e) If personnel are to be only partially funded by this cooperative agreement, indicate the percentage of time to be allocated to the projects and identify the resources used to fund the remainder of the individual's salary.

Budget Narratives:

CATEGORICAL BUDGET AND BUDGET JUSTIFICATION (10 points)

This section should provide a clear estimate of the projects' program costs and justification for expenses for the entire cooperative agreement periods. The budgets and budget justifications should be consistent with the tasks identified in the work plans. Because each of the two awards included in this announcement are funded through separate funding streams, the applicant must provide a separate budget and budget narrative for each of the four components and must account for costs separately.

(a) Provide a categorical budget for each of the 12-month budget periods requested for each of the four projects.

(b) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

(c) Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.,* equipment specifications, *etc.*).

Appendix Items

(1) Resolutions from Health Board of Directors (if applicable).

(2) Work plan for proposed objectives.

(3) Position descriptions for key staff.

(4) Resumes of key staff that reflect current duties.

(5) Consultant proposed scope of work (if applicable).

(6) Indirect Cost Rate Agreement (if applicable).

(7) Organizational chart.

Review and Selection Process

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria may not be referred to the Objective Review Committee (ORC). Applicants will be notified by DGM, via e-mail or letter, to outline minor missing components (*i.e.,* signature on the SF–424, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the e-mail notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be considered to be ''Disapproved'' and will be informed via e-mail or regular mail by the ODSCT of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page (SF424), of the application within 60 days of the completion of the Objective Review.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by DGM and will be e-mailed or mailed via postal mail to the entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer as the authorizing document for which funds are disbursed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is a legally binding document.

2. Administrative Requirements

Grants are administrated in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Announcement.

B. Administrative Regulations for Grants:

• 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

• 45 CFR part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

• HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

• Title 2: Grant and Agreements, part 225–Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).

• Title 2: Grants and Agreements, Part 230–Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

• OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, part II–27, IHS requires applicants to obtain a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of Interior National Business Center *http://www.aqd.nbc.gov/services/ICS.aspx.* If your organization has questions regarding the indirect cost policy, please call Mr. Andrew Diggs, DGM, at (301) 443–5204 to request assistance.

4. Reporting Requirements

The awardee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. The reporting requirements for this program are noted below.

A. Progress Reports

Semi-annual progress report must be submitted within 30 days of the conclusion of the first six months of the budget period and a final within 90 days of the expiration of the budget period for each award. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. Final reports must be submitted within 90 days of expiration of the budget/project periods. Separate progress reports are required for the IHS award and the CMS award.

B. Financial Reports

SF 425 Federal Financial Reports, Cash Transaction and Expenditure Reports are due 30 days after the close of every calendar quarter to the Division of Payment Management, HHS at: *http://www.dpm.gov* for each award. It is recommended that you also send a copy of your SF 425 reports to your Grants Management Specialists. Failure to submit timely reports may cause a disruption in timely payments to your organization. Separate financial reports are required for the IHS award and the CMS award. The awardee is responsible for accounting for each award separately.

Awardees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Reports.

C. Federal Subaward Reporting System (FSRS)

These awards may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR part 170. The Transparency Act requires OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

Effective October 1, 2010, IHS was instructed by HHS to implement a new Term and Condition into all new NoA, regarding the requirements for use and reporting of Federal subaward data. Although required to be referenced in all Funding Opportunity Announcements, this IHS Term of Award is applicable to all New (Type 1) IHS grants and cooperative agreement awards issued after October 1, 2010. Additionally, all IHS Renewal (Type 2) grant and cooperative agreement awards and Competing Revision awards (Competing T–3s) issued on or after October 1, 2010, may also be subject to the following award term. Further guidance on Renewal and Competing Revision award requirements to report subaward data is expected to be provided as it becomes available.

For the full IHS award term and condition implementing this requirement and additional award applicability information please visit the Grants Policy Web site at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contact(s)

Grants (Business)

Mr. Andrew Diggs, DGM, Grants Management Specialist, 801 Thompson Avenue, TMP Suite 360, Rockville, Maryland 20852. *Telephone:* (301) 443–5204. *Fax:* (301) 443–9602. *E-Mail: Andrew.Diggs@ihs.gov.*

Program (Programmatic/Technical)

Ms. Roselyn Tso, Acting Director, ODSCT, 801 Thompson Avenue, Suite 220, Rockville, Maryland 20852. *Telephone:* (301) 443–1104. *Fax:* (301) 443–4666. *E-Mail: Roselyn.Tso@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: July 15, 2011.

Randy Grinnell,

Deputy Director, Indian Health Service.

[FR Doc. 2011–19144 Filed 7–27–11; 8:45 am]

BILLING CODE 4165–16–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of ACHP Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet Thursday, August 11, 2011. The meeting will be held in the Plymouth Room of the Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

Call to Order—9 a.m.
I. Chairman's Welcome
II. Presentation of Chairman's Award
III. Chairman's Report
IV. ACHP Management Issues
  A. Credentials Committee Report and Recommendations
  B. Alumni Foundation
  C. 2012 Meeting Dates
V. Historic Preservation Policy and Programs
  A. Rightsizing Task Force
  B. Economic Benefits Study—Next Steps
  C. Historic Preservation in America's Great Outdoors
  D. ACHP Legislative Agenda
  E. Sustainability Task Force
  F. Web Site Update and Social Media
  G. Preservation Action Federal Preservation Task Force Report and Recommendations
VI. Section 106 Issues
  A. Executive Order 13563 on Regulatory Revision and Section 106 Regulations
  B. Traditional Cultural Landscapes Forum Follow Up
  C. Western Renewable Energy and Historic Preservation Working Group
VII. New Business
VIII. Adjourn

Note: The meetings of the ACHP are open to the public.

If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting. For further information: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: July 21, 2011.

John M. Fowler,

Executive Director.

[FR Doc. 2011–18895 Filed 7–27–11; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0020]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Availability of FY2012 Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Each year, the Federal Emergency Management Agency (FEMA) is required by the Write-Your-Own (WYO) Program Financial Assistance/Subsidy Arrangement (Arrangement) to notify private insurance companies (Companies) and to make available to the Companies the terms for subscription or re-subscription to the Arrangement. In keeping with that requirement, this notice provides the terms to the Companies to subscribe or re-subscribe to the Arrangement.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, DHS/FEMA, 1800 South Bell Street, Room 720, Arlington, VA 20598–3020, 202–646–3429 (phone), 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: Under the Write-Your-Own (WYO) Program Financial Assistance/Subsidy Arrangement (Arrangement), 87 (as of July 1, 2011) private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names based on an Arrangement with the Federal Insurance Administration (FIA) published at 44 CFR Part 62, appendix A. The WYO insurers receive an expense allowance and remit the remaining premium to the Federal Government. The Federal Government also pays flood losses and pays loss adjustment expenses based on a fee schedule. In addition, under certain circumstances reimbursement for litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by the FIA based on documentation submitted by the WYO insurers. The complete Arrangement is published in 44 CFR Part 62, appendix A. Each year, FEMA is required to publish in the **Federal Register** and make available to the Companies the terms for subscription or re-subscription to the Arrangement.

There have been no changes to the Arrangement this year.

During August 2011, FEMA will send a copy of the offer for the FY2012 Arrangement, together with related materials and submission instructions, to all private insurance companies participating under the current FY2011 Arrangement. Any private insurance company not currently participating in the WYO Program but wishing to consider FEMA's offer for FY2012 may request a copy by writing: DHS/FEMA, Federal Insurance and Mitigation Administration, Attn: Edward L. Connor, WYO Program, 1800 South Bell Street, Room 720, Arlington, VA 20598–3020, or contact Edward Connor at 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

Edward L. Connor,

Deputy Federal Insurance and Mitigation Administrator, Insurance National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–19043 Filed 7–27–11; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–68]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Admissions/Occupancy Policies

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The forms are prepared by a general contractor constructing a public housing development under the conventional bid method in order to establish the

amount due from a PHA for work completed during the current month. The contractor/subcontractor reports provide details, and summaries of payments, change orders, and schedule of materials stored for the development. PHAs that have entered into an Annual Contributions Contract (ACC) with HUD must develop and keep on file the admissions and occupancy policies approved by HUD.

DATES: *Comments Due Date: August 29, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0220) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Public Housing Admissions/Occupancy Policies.

OMB Approval Number: 2577–0220.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The forms are prepared by a general contractor constructing a public housing development under the conventional bid method in order to establish the amount due from a PHA for work completed during the current month. The contractor/subcontractor reports provide details, and summaries of payments, change orders, and schedule of materials stored for the development. PHAs that have entered into an Annual Contributions Contract (ACC) with HUD must develop and keep on file the admissions and occupancy policies approved by HUD.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,278	1		60		196,680

Total Estimated Burden Hours: 196,680.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 25, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–19119 Filed 7–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5565–FA–01]

Announcement of Funding Awards for the HUD–Veterans Affairs Supportive Housing (HUD–VASH) Program for Fiscal Years (FY) 2010

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the FY 2010 HUD–VASH program. This announcement contains the consolidated names and addresses of those award recipients selected for funding under the Omnibus Appropriations Act, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Dennis, Director, Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4228, Washington, DC 20410, telephone number 202–402–4059. For the hearing or speech impaired, this number may be accessed via TTY (text telephone) by calling the Federal Relay Service at 800–877–8339. (Other than the ''800'' TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The 2010 Appropriations Act (Pub. L. 111–117) made $75 million available for HUD–VASH, an initiative that combines HUD Housing Choice Voucher (HCV) rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans Affairs (VA) at its medical centers and in the community. The HCV program is authorized under section 8(o)(19) of the United States Housing Act of 1937. The 2010 Appropriations Act requires HUD to distribute assistance without competition, to public housing agencies (PHAs) that partner with eligible Veterans Affairs Medical Centers (VAMCs) or other entities as designated by the VA. As required by statute, selection was based on geographical need for such assistance as identified by the VA, public housing agency performance, and other factors as specified by HUD in consultation with the VA. On May 6, 2008 (73 FR 25026), HUD published in the **Federal Register** a notice that set forth the policies and procedures for the administration of tenant-based Section 8 HCV rental assistance under the HUD–VASH program administered by local PHAs that have partnered with local VA medical centers. The **Federal Register** published a correction of the May 6, 2008 notice on May 19, 2008 (73 FR 28863).

As required by the FY 2010 Appropriations Act, the VA identified VAMCs to participate in the program taking into account the population of homeless veterans needing services in the area, the number of homeless veterans recently served by the homeless programs at each VAMC, geographic distribution, and the VA's case management resources. After considering location and administrative performance of PHAs in the jurisdiction of each VAMC, HUD invited PHAs to apply for HUD–VASH vouchers. Of the $75 million appropriated in 2010, approximately $5.4 million was set-aside for project-basing of HUD–VASH vouchers. A HUD Notice, PIH 2010–40 (HA) that was issued on September 28, 2010, invited PHAs that had received a HUD–VASH allocation in FY 2008, 2009 or 2010 to apply for units from this set-aside. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), this **Federal Register** publication lists in Appendix A the names, addresses, number of vouchers and amounts of the 207 PHAs to which awards were made under the FY2010 HUD–VASH initiative. Appendix B lists the names, addresses, number of vouchers and amounts awarded to 29 PHAs under the HUD–VASH set-aside.

Dated: July 15, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

2010 VASH RECIPIENTS

Recipient	Address	City	State	Zip code	Amount	Vouchers
AK HSG FINANCE CORP.	4300 Boniface Parkway	Anchorage	AK	99510	$192,591	25
HSG AUTH OF BIRMINGHAM DISTRICT.	1826 3rd Avenue S	Birmingham	AL	35233	$242,070	50
MOBILE HOUSING BOARD.	151 S Claiborne Street	Mobile	AL	36602	$155,748	25
HOUSING AUTHORITY HUNTSVILLE.	200 Washington Street NE	Huntsville	AL	35804	$134,796	25
HOUSING AUTHORITY OPELIKA.	1706 Toomer Street	Opelika	AL	36801	$149,655	25
HOUSING AUTHORITY TUSCALOOSA.	2117 Jack Warner Parkway	Tuscaloosa	AL	35401	$88,977	25
HSG AUTH OF THE CITY OF NORTH LITTLE ROCK.	2201 Division	North Little Rock	AR	72114	$96,564	25
FAYETTEVILLE HOUSING AUTHORITY.	#1 North School Avenue	Fayetteville	AR	72701	$84,393	25
CITY OF PHOENIX	251 W Washington Street	Phoenix	AZ	85003	$818,970	125
CITY OF TUCSON	310 N. Commerce Park Loop	Tucson	AZ	85745	$408,780	75
CITY OF FLAGSTAFF HOUSING AUTHORITY.	3481 Fanning Drive	Flagstaff	AZ	86004	$218,667	25
COUNTY OF COCHISE PHA.	Old Bisbee High School, First Floor.	Bisbee	AZ	85603	$127,809	25
SAN FRANCISCO HSG AUTH.	1815 Egbert Avenue	San Francisco	CA	94124	$1,274,796	100
COUNTY OF LOS ANGELES HOUSING AUTH.	2 S Coral Circle	Monterey Park	CA	91755	$2,409,561	225
CITY OF LOS ANGELES HSG AUTH.	2600 Wilshire Blvd	Los Angeles	CA	90057	$1,916,128	200
COUNTY OF SACRAMENTO HOUSING AUTHORITY.	801 12th Street	Sacramento	CA	95814	$650,637	75
HOUSING AUTHORITY COUNTY OF KERN.	601–24th Street	Bakersfield	CA	93301	$137,025	25
COUNTY OF SAN MATEO HSG AUTH.	264 Harbor Boulevard	Belmont	CA	94002	$353,751	25
COUNTY OF SAN BERNARDINO HSG AUTH.	715 E. Brier Dr	San Bernardino	CA	92408	$180,312	25
COUNTY OF SANTA BARBARA HSG AUTH.	815 W Ocean Avenue	Lompoc	CA	93436	$229,932	25
COUNTY OF SAN JOAQUIN HOUSING AUTH.	448 S Center Street	Stockton	CA	95203	$185,223	25
COUNTY OF RIVERSIDE HSG AUTH.	5555 Arlington Avenue	Riverside	CA	92504	$395,910	50
CITY OF OXNARD HOUSING AUTHORITY.	435 South D Street	Oxnard	CA	93030	$247,335	25
COUNTY OF MONTEREY HSG AUTH.	123 Rico Street	Salinas	CA	93907	$417,576	50

2010 VASH RECIPIENTS—Continued

Recipient	Address	City	State	Zip code	Amount	Vouchers
CITY OF SAN BUENA VENTURA HSG AUTHORITY.	995 Riverside Street	Ventura	CA	93001	$283,296	25
CITY OF VALLEJO	200 Georgia St.	Vallejo	CA	94590	$262,134	25
COUNTY OF SANTA CLARA HOUSING AUTH.	505 W Julian Street	San Jose	CA	95110	$1,480,305	125
CITY OF PITTSBURG HSG AUTH.	916 Cumberland Street	Pittsburg	CA	94565	$539,796	50
SAN DIEGO HOUSING COMMISSION.	1122 Broadway Suite 300	San Diego	CA	92101	$683,325	75
CITY OF SAN LUIS OBISPO HOUSING AUTHORITY.	487 Leff Street	San Luis Obispo	CA	93401	$198,654	25
ALAMEDA COUNTY HSG AUTH.	22941 Atherton Street	Hayward	CA	94541	$988,254	75
CITY OF LONG BEACH HSG AUTH.	521 East 4th Street	Long Beach	CA	90802	$881,808	100
CITY OF MADERA HOUSING AUTHORITY.	205 N. G Street	Madera	CA	93637	$324,504	50
SANTA CRUZ COUNTY HSG AUTH.	2931 Mission Street	Santa Cruz	CA	95060	$287,886	25
MENDOCINO COUNTY	1076 N State Street	Ukiah	CA	95482	$159,177	25
CITY OF SANTA ROSA	90 Santa Rosa Ave.	Santa Rosa	CA	95402	$711,306	75
COUNTY OF ORANGE HOUSING AUTHORITY.	1770 North Broadway	Santa Ana	CA	92706	$1,667,412	150
COUNTY OF SAN DIEGO.	3989 Ruffin Road	San Diego	CA	92123	$733,653	75
PLACER COUNTY HOUSING AUTHORITY.	11552 B Avenue	Auburn	CA	95603	$179,238	25
GRAND JUNCTION HSG AUTH.	1011 North Tenth Street	Grand Junction	CO	81501	$139,962	25
AURORA HOUSING AUTHORITY.	10745 E. Kentucky Avenue	Aurora	CO	80012	$436,272	50
COLORADO DEPARTMENT OF HUMAN SERVICES.	4020 South Newton St.	Denver	CO	80236	$525,981	100
COLORADO DIVISION OF HOUSING.	1313 Sherman Street	Denver	CO	80203	$329,616	50
WATERBURY HOUSING AUTHORITY.	2 Lakewood Road	Waterbury	CT	06704	$188,526	25
WEST HAVEN HOUSING AUTHORITY.	15 Glade Street	West Haven	CT	06516	$196,470	25
CONN DEPT OF SOCIAL SERVICES.	25 Sigourney Street	Hartford	CT	06106	$934,999	90
D.C HOUSING AUTHORITY.	1133 N. Capitol Street, NE	Washington	DC	20002	$1,205,610	175
WILMINGTON HOUSING AUTHORITY.	400 N. Walnut Street	Wilmington	DE	19801	$121,950	25
HOUSING AUTHORITY OF JACKSONVILLE.	1300 Broad Street	Jacksonville	FL	32202	$751,728	100
ST. PETERSBURG HOUSING AUTHORITY.	888 Executive Center Drive West.	St. Petersburg	FL	33702	$541,050	125
HOUSING AUTHORITY TAMPA.	1529 W. Main Street	Tampa	FL	33607	$1,052,676	150
ORLANDO HOUSING AUTHORITY.	390 North Bumby Avenue	Orlando	FL	32803	$1,146,491	125
HOUSING AUTHORITY DAYTONA BEACH.	211 N. Ridgewood Avenue	Daytona Beach	FL	32114	$173,742	25
HOUSING AUTHORITY SARASOTA.	40 South Pineapple Ave	Sarasota	FL	34236	$241,566	25
HOUSING AUTHORITY WEST PALM BEACH GENERAL FUND.	1715 Division Avenue	West Palm Beach	FL	33407	$424,733	50
HOUSING AUTHORITY FORT LAUDERDALE CITY.	437 SW 4th Avenue	Fort Lauderdale	FL	33315	$489,912	50

2010 VASH RECIPIENTS—Continued

Recipient	Address	City	State	Zip code	Amount	Vouchers
CITY OF LAKELAND HOUSING AUTHORITY.	430 Hartsell Avenue	Lakeland	FL	33815	$168,270	25
NW FLORIDA REGIONAL HA.	5302 Brown Street	Graceville	FL	32440	$150,174	25
HOUSING AUTHORITY MIAMI BEACH.	200 Alton Road	Miami Beach	FL	33139	$357,804	50
ORMOND BEACH HSG AUTH.	100 New Britain Ave.	Ormond Beach	FL	32174	$178,833	25
HOUSING AUTHORITY OF THE CITY OF TITUSVILLE.	524 S. Hopkins Avenue	Titusville	FL	32796	$325,242	50
HOUSING AUTHORITY OCALA.	1629 NW 4th Street	Ocala	FL	34475	$152,682	25
HOUSING AUTHORITY FORT PIERCE.	511 Orange Avenue	Fort Pierce	FL	34950	$176,610	25
HOUSING AUTHORITY OF THE CITY OF FORT MYERS.	4224 Renaissance Preserve Way.	Fort Myers	FL	33916	$609,146	90
HOUSING AUTHORITY ALACHUA COUNTY.	703 NE 1st Street	Gainesville	FL	32601	$402,561	75
HOUSING AUTHORITY TALLAHASSEE.	2940 Grady Road	Tallahassee	FL	32312	$207,243	25
CITY OF PENSACOLA SECTION 8.	420 W. Chase Street	Pensacola	FL	32501	$330,858	75
PASCO COUNTY HOUSING AUTHORITY.	14517 7th Street	Dade City	FL	33523	$166,029	25
HOUSING AUTHORITY SAVANNAH.	1407 Wheaton Street	Savannah	GA	31404	$371,607	50
HOUSING AUTHORITY MARIETTA.	95 Cole Street NE	Marietta	GA	30060	$195,141	25
HOUSING AUTHORITY OF THE CITY OF COLLEGE PARK.	2000 W. Princeton Avenue	College Park	GA	30337	$205,776	25
GEORGIA DEPT. OF COMMUNITY AFFAIRS–RENTAL ASSIST..	60 Executive Parkway South, NE.	Atlanta	GA	30329	$1,073,589	275
GUAM HSG AND URBAN RENEWAL AUTH.	117 Bien Venida Avenue	Sinajana	GQ	96910	$68,600	10
HAWAII PUBLIC HOUSING AUTHORITY.	1002 North School Street	Honolulu	HI	96817	$373,762	40
SIOUX CITY HOUSING SERVICES DIVISION.	405 6th St.—#107	Sioux City	IA	51101	$88,359	25
CITY OF DES MOINES MUNICIPAL HOUSING AGENCY.	Park Fair Mall, Suite 101	Des Moines	IA	50313	$118,797	25
COUNCIL BLUFFS MUNICIPAL HOUSING AGENCY.	505 S. Sixth St	Council Bluffs	IA	51501	$52,652	10
BOISE CITY HOUSING AUTHORITY.	1276 River Street	Boise	ID	83702	$122,535	25
IDAHO HOUSING AND FINANCE ASSOCIATION.	565 W. Myrtle Street	Boise	ID	83702	$114,414	25
CHICAGO HOUSING AUTHORITY.	60 E. Van Buren St	Chicago	IL	60605	$798,300	100
HOUSING AUTHORITY OF COOK COUNTY.	175 W. Jackson	Chicago	IL	60604	$168,057	25
WAUKEGAN HOUSING AUTHORITY.	215 South Martin Luther King Avenue.	Waukegan	IL	60085	$203,805	25
HSG AUTHORITY OF THE COUNTY OF DEKALB.	310 N 6th Street	Dekalb	IL	60115	$170,418	25
INDIANAPOLIS HOUSING AGENCY.	1919 North Meridian Street	Indianapolis	IN	46202	$442,170	75
INDIANA HOUSING & COMMUNITY DEVELOPMENT AUTHORITY.	30 S. Meridian St.	Indianapolis	IN	46204	$127,047	25

2010 VASH RECIPIENTS—Continued

Recipient	Address	City	State	Zip code	Amount	Vouchers
KANSAS CITY HOUSING AUTHORITY.	1124 N 9th Street	Kansas City	KS	66101	$155,217	25
TOPEKA HOUSING AUTHORITY.	2010 SE California Avenue	Topeka	KS	66607	$82,452	25
WICHITA HOUSING AUTHORITY.	332 Riverview Street	Wichita	KS	67203	$69,115	15
LOUISVILLE HOUSING AUTHORITY.	420 S 8th Street	Louisville	KY	40203	$147,993	25
LEXINGTON FAYETTE URBAN COUNTY HOUSING AUTHORITY.	300 West New Circle Road	Lexington	KY	40505	$104,565	25
COVINGTON HOUSING AUTHORITY.	638 Madison Avenue, 5th Floor.	Covington	KY	41014	$130,635	25
KENNER HOUSING AUTHORITY.	1013 31st Street	Kenner	LA	70065	$411,688	65
RAPIDES PARISH HOUSING AUTHORITY.	119 Boyce Garden Drive	Boyce	LA	71409	$93,831	25
BOSSIER PARISH POLICE JURY.	3022 Old Minden Road	Bossier City	LA	71112	$151,341	25
BOSTON HOUSING AUTHORITY.	52 Chauncy Street	Boston	MA	02111	$540,006	50
CAMBRIDGE HOUSING AUTHORITY.	675 Massachusetts Avenue	Cambridge	MA	02139	$372,900	25
NEW BEDFORD HOUSING AUTHORITY.	134 South Second Street	New Bedford	MA	02740	$176,166	25
WORCESTER HOUSING AUTHORITY.	40 Belmont Street	Worcester	MA	01605	$350,796	50
NORTHAMPTON HOUSING AUTHORITY.	49 Old South Street	Northampton	MA	01060	$244,770	50
BRAINTREE HSG AUTHORITY.	25 Roosevelt Street	Braintree	MA	02184	$279,105	25
COMM DEV PROG COMM OF MA., E.O.C.D.	100 Cambridge Street, Suite 300.	Boston	MA	02114	$961,023	100
HOUSING AUTHORITY OF BALTIMORE CITY.	417 E Fayette Street	Baltimore	MD	21202	$722,475	75
MONTGOMERY CO HOUSING AUTHORITY.	10400 Detrick Avenue	Kensington	MD	20895	$329,928	25
HSG AUTHORITY PRINCE GEORGE'S COUNTY.	9400 Peppercorn Place	Largo	MD	20774	$533,966	40
MAINE STATE HSG AUTHORITY.	353 Water Street	Augusta	ME	04330	$166,290	25
SAGINAW HOUSING COMMISSION.	1803 Norman Street	Saginaw	MI	48601	$124,083	25
LANSING HOUSING COMMISSION.	310 Seymour Avenue	Lansing	MI	48933	$146,862	25
ANN ARBOR HOUSING COMMISSION.	727 Miller Avenue	Ann Arbor	MI	48103	$130,074	25
MICHIGAN STATE HSG. DEV. AUTH.	735 E. Michigan	Lansing	MI	48912	$520,320	90
ST PAUL PHA	555 N. Wabasha Street	Saint Paul	MN	55102	$198,657	25
MINNEAPOLIS PHA	1001 Washington Avenue N	Minneapolis	MN	55401	$278,844	50
ST. LOUIS HOUSING AUTHORITY.	3520 Page Boulevard	Saint Louis	MO	63106	$141,477	25
HOUSING AUTHORITY OF KANSAS CITY, MISSOURI.	301 E. Armour Blvd.—#200	Kansas City	MO	64111	$266,766	50
ST. FRANCOIS COUNTY PH AGENCY.	107 Industrial Dr.	Park Hills	MO	63601	$101,031	25
HOUSING AUTHORITY BILOXI.	330 Benachi Avenue	Biloxi	MS	39530	$185,457	25
MISS REGIONAL HOUSING AUTHORITY VIII.	10430 Three Rivers Road	Gulfport	MS	39503	$169,632	25
JACKSON HOUS AUTH	2747 Livingston Road	Jackson	MS	39213	$129,729	25
MT DEPARTMENT OF COMMERCE.	301 South Park Ave.	Helena	MT	59620	$105,567	25

2010 VASH RECIPIENTS—Continued

Recipient	Address	City	State	Zip code	Amount	Vouchers
HOUSING AUTHORITY OF THE CITY OF WILMINGTON.	1524 South 16th Street	Wilmington	NC	28402	$146,265	25
HOUSING AUTHORITY OF THE CITY OF CHARLOTTE.	1301 South Boulevard	Charlotte	NC	28203	$327,222	50
HSG AUTHORITY OF THE CITY OF ASHEVILLE.	165 S French Broad Ave.	Asheville	NC	28801	$122,622	25
FAYETTEVILLE METROPOLITAN HSG AUTH.	1000 Ramsey Street	Fayetteville	NC	28302	$157,149	25
GREENSBORO HOUSING AUTHORITY.	450 N Church Street	Greensboro	NC	27401	$134,685	25
HOUSING AUTHORITY WINSTON–SALEM.	500 West Fourth Street, Suite 300.	Winston-Salem	NC	27101	$151,191	25
HOUSING AUTHORITY COUNTY OF WAKE.	100 Shannon Drive	Zebulon	NC	27597	$158,730	25
GRAND FORKS HOUSING AUTHORITY.	1405 First Avenue North	Grand Forks	ND	58203	$118,707	25
OMAHA HOUSING AUTHORITY.	540 27th St	Omaha	NE	68105	$196,573	40
HOUSING AUTHORITY OF LINCOLN.	5700 R Street	Lincoln	NE	68505	$92,516	25
MANCHESTER HOUSING AUTHORITY.	198 Hanover Street	Manchester	NH	03104	$98,498	10
NEW HAMPSHIRE HOUSING FINANCE AUTH.	32 Constitution Drive	Bedford	NH	03110	$208,934	25
CAMDEN HOUSING AUTHORITY.	2021 Watson Street	Camden	NJ	08105	$210,873	25
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS.	101 South Broad Street	Trenton	NJ	08625	$1,144,410	125
ALBUQUERQUE HSG AUTHORITY.	1840 University Blvd. SE	Albuquerque	NM	87106	$194,172	50
GALLUP HSG AUTHORITY.	203 Debra Drive	Gallup	NM	87301	$118,584	25
CITY OF RENO HSG AUTHORITY.	1525 E 9th Street	Reno	NV	89512	$316,620	50
SOUTHERN NEVADA REGIONAL HOUSING AUTHORITY.	340 North 11th Street	Las Vegas	NV	89101	$1,448,136	150
NEW YORK CITY HOUSING AUTHORITY.	250 Broadway	New York	NY	10007	$3,653,820	300
ALBANY HOUSING AUTHORITY.	200 South Pearl St.	Albany	NY	12202	$123,147	25
HOUSING AUTHORITY OF ROCHESTER.	675 West Main Street	Rochester	NY	14611	$116,721	25
TOWN OF AMHERST	1195 Main St.	Buffalo	NY	14209	$119,937	25
NYS HSG TRUST FUND CORPORATION.	38–40 State Street, 4th Floor North.	Albany	NY	12207	$1,009,224	100
COLUMBUS METRO HOUSING AUTHORITY.	880 East 11th Ave	Columbus	OH	43211	$129,045	25
CUYAHOGA MHA	1441 W 25th Street	Cleveland	OH	44113	$431,982	75
CINCINNATI METROPOLITAN HSG. AUTH.	16 W Central Parkway	Cincinnati	OH	45202	$106,146	25
DAYTON METROPOLITAN HOUSING AUTHORITY.	400 Wayne Ave	Dayton	OH	45401	$97,080	25
LUCAS MHA	435 Nebraska Avenue	Toledo	OH	43604	$144,045	25
AKRON MHA	100 W Cedar Street	Akron	OH	44307	$142,422	25
CHILLICOTHE MET HA	4th St.	Chillicothe	OH	45601	$129,180	25
OKLAHOMA CITY HOUSING AUTHORITY.	1700 NE 4th St	Oklahoma City	OK	73117	$79,974	25
OKLAHOMA HOUSING FINANCE AGENCY.	100 NW 63rd St	Oklahoma City,	OK	73116	$124,857	25
HOUSING AUTHORITY OF PORTLAND.	135 SW Ash Street	Portland	OR	97204	$580,021	90

2010 VASH RECIPIENTS—Continued

Recipient	Address	City	State	Zip code	Amount	Vouchers
HOUSING AUTHORITY OF DOUGLAS COUNTY.	902 West Stanton Street	Roseburg	OR	97470	$67,566	25
HA & COMMUNITY SERVICES AGENCY OF LANE COUNTY.	177 Day Island Road	Eugene	OR	97401	$132,189	25
HOUSING AUTHORITY OF THE CITY OF SALEM.	360 Church Street SE	Salem	OR	97301	$134,544	25
KLAMATH HOUSING AUTHORITY.	1445 Avalon Street	Klamath Falls	OR	97603	$113,394	25
COOS–CURRY HOUSING AUTHORITY.	1700 Monroe Street	North Bend	OR	97459	$96,879	25
HOUSING AUTHORITY OF WASHINGTON COUNTY.	111 NE Lincoln Street	Hillsboro	OR	97124	$178,596	25
CENTRAL OREGON REGIONAL HOUSING AUTHORITY.	405 SW Sixth Street	Redmond	OR	97756	$154,821	25
PHILADELPHIA HOUSING AUTHORITY.	12 S 23rd Street	Philadelphia	PA	19103	$492,858	75
SCRANTON HOUSING AUTHORITY.	400 Adams Avenue	Scranton	PA	18510	$106,062	25
ALLEGHENY COUNTY HOUSING AUTHORITY.	625 Stanwix Street	Pittsburgh	PA	15222	$200,154	50
ERIE CITY HOUSING AUTHORITY.	606 Holland Street	Erie	PA	16501	$107,346	25
DELAWARE COUNTY HOUSING AUTHORITY.	1855 Constitution Avenue	Woodlyn	PA	19094	$199,401	25
HOUSING AUTH CO OF LAWRENCE.	481 Neshannock Avenue	New Castle	PA	16101	$95,511	25
LEBANON COUNTY HOUSING AUTHORITY.	PO Box 420	Lebanon	PA	17042	$79,473	25
PROVIDENCE HOUSING AUTHORITY.	100 Broad Street	Providence	RI	02903	$127,080	25
PUERTO RICO DEPT OF HOUSING.	606 Ave. Barbosa	San Juan	RQ	00928	$132,924	25
HOUSING AUTHORITY OF CHARLESTON.	550 Meeting St	Charleston	SC	29403	$172,398	25
HOUSING AUTHORITY GREENVILLE.	511 Augusta St.	Greenville	SC	29603	$135,579	25
HOUSING AUTHORITY OF MYRTLE BEACH.	605 10th Avenue N	Myrtle Beach	SC	29577	$141,810	25
SIOUX FALLS HOUSING & REDEVELOPMENT COMMISSION.	630 S Minnesota Avenue	Sioux Falls	SD	57104	$192,281	30
MEMPHIS HOUSING AUTHORITY.	700 Adams Avenue	Memphis	TN	38105	$257,574	50
METROPOLITAN DEVELOPMNT & HSG AGNCY.	701 S 6th Street	Nashville	TN	37206	$374,202	75
HOUSING AUTHORITY JACKSON.	125 Preston Street	Jackson	TN	38301	$73,132	15
HOUSING AUTHORITY MURFREESBORO.	415 North Maple Street	Murfreesboro	TN	37130	$138,090	25
AUSTIN HOUSING AUTHORITY.	1124 S Ih 35	Austin	TX	78704	$453,738	50
HOUSING AUTHORITY OF EL PASO.	5300 E Paisano Drive	El Paso	TX	79905	$111,576	25
FORT WORTH HOUSING AUTHORITY.	1201 E 13th Street	Fort Worth	TX	76102	$327,048	50
SAN ANTONIO HOUSING AUTHORITY.	818 S Flores Street	San Antonio	TX	78204	$385,872	100
CORPUS CHRISTI HOUSING AUTHORITY.	3701 Ayers Street	Corpus Christi	TX	78415	$186,186	25
HOUSING AUTHORITY OF DALLAS.	3939 N. Hampton Road	Dallas	TX	75212	$636,768	100

2010 VASH RECIPIENTS—Continued

Recipient	Address	City	State	Zip code	Amount	Vouchers
HOUSING AUTHORITY OF WACO.	4400 Cobbs Drive	Waco	TX	76710	$126,027	25
HARLINGEN HSG AUTHORITY.	219 East Jackson Street	Harlingen	TX	78550	$128,385	25
HARRIS COUNTY HSG AUTHORITY.	8933 Interchange	Houston	TX	77054	$664,677	75
CENTRAL TEXAS COUNCIL OF GOVTS.	2180 North Main	Belton	TX	76513	$142,755	25
HOUSING AUTHORITY OF CITY OF OGDEN.	1100 Grant Avenue	Ogden	UT	84404	$143,493	25
HOUSING AUTHORITY OF THE COUNTY OF SALT LAKE.	3595 S Main Street	Salt Lake City	UT	84115	$303,178	40
NORFOLK REDEVELOPMENT & HOUSING AUTHORITY.	201 Granby Street	Norfolk	VA	23510	$230,499	25
ROANOKE REDEVELOPMENT & HOUSING AUTHORITY.	2624 Salem Turnpike NW	Roanoke	VA	24017	$72,609	25
CITY OF VIRGINIA BEACH.	2424 Courthouse Dr.	Virginia Beach	VA	23456	$196,398	25
VIRGINIA HOUSING DEVELOPMENT AUTHORITY.	601 South Belvidere Street	Richmond	VA	23220	$357,558	50
VERMONT STATE HOUSING AUTHORITY.	1 Prospect Street	Montpelier	VT	05602	$156,744	25
SEATTLE HOUSING AUTHORITY.	120 Sixth Avenue North	Seattle	WA	98109	$441,022	60
KING COUNTY HOUSING AUTHORITY.	600 Andover Park West	Seattle	WA	98188	$521,610	60
HOUSING AUTHORITY OF THE CITY OF TACOMA.	902 S L Street	Tacoma	WA	98405	$151,173	25
HOUSING AUTHORITY CITY OF LONGVIEW.	1207 Commerce Avenue	Longview	WA	98632	$131,901	25
BELLINGHAM HOUSING AUTHORITY.	208 Unity Street	Bellingham	WA	98225	$163,080	25
HOUSING AUTHORITY OF SNOHOMISH COUNTY.	12525 4th Avenue West	Everett	WA	98204	$233,031	25
HOUSING AUTHORITY OF THE CITY OF YAKIMA.	810 N 6th Avenue	Yakima	WA	98902	$125,364	25
PIERCE COUNTY HOUSING AUTHORITY.	603 Polk Street S	Tacoma	WA	98444	$179,013	25
SPOKANE HOUSING AUTHORITY.	55 W Mission Avenue	Spokane	WA	99201	$112,116	25
HOUSING AUTHORITY OF THE CITY OF WALLA WALLA.	501 Cayuse Street	Walla Walla	WA	99362	$206,946	50
HA OF THE CITY OF MILWAUKEE.	809 North Broadway	Milwaukee	WI	53202	$107,877	25
APPLETON HOUSING AUTHORITY.	925 W.northland	Appleton	WI	54914	$198,372	50
THE CITY OF FAIRMONT HSG AUTH.	103 12th Street	Fairmont	WV	26555	$102,828	20
HOUSING AUTHORITY CITY OF KEYSER.	470 Virginia Street	Keyser	WV	26726	$70,440	20
HOUSING AUTHORITY OF THE CITY OF CHEYENNE.	3304 Sheridan Street	Cheyenne	WY	82009	$104,595	25

APPENDIX B

2010 VASH SET-ASIDE RECIPIENTS

Recipient	Address	City	State	Zip Code	Amount	Vouchers
CITY OF PHOENIX HOUSING DEPARTMENT.	251 W Washington Street	Phoenix	AZ	85003	$86,437	10
HOUSING AUTHORITY OF THE COUNTY OF LOS ANGELES.	2 S Coral Circle	Monterey Park	CA	91755	527,628	50
HOUSING AUTHORITY OF THE CITY OF LOS ANGELES.	2600 Wilshire Blvd	Los Angeles	CA	90057	517,650	50
HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER.	Box 40305, Mile High Station	Denver	CO	80203	135,977	15
GRAND JUNCTION HOUSING AUTHORITY.	1011 North Tenth Street	Grand Junction	CO	81501	83,356	15
COLORADO DIVISION OF HOUSING.	1313 Sherman Street	Denver	CO	80203	107,000	16
CONNECTICUT DEPARTMENT OF SOCIAL SERVICES.	25 Sigourney Street	Hartford	CT	06106	150,534	15
ALACHUA COUNTY HOUSING AUTHORITY.	703 NE First Street	Gainesville	FL	32601	163,134	25
INDIANAPOLIS HOUSING AGENCY.	1919 North Meridian Street	Indianapolis	IN	46202	233,995	35
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT.	100 Cambridge Street, Suite 300.	Boston	MA	02114	338,400	32
BALTIMORE COUNTY, MD.	Drum Castle Government Center.	Baltimore	MD	21212	420,846	50
ANN ARBOR HOUSING COMMISSION.	727 Miller Avenue	Ann Arbor	MI	48103	36,100	5
HOUSING AUTHORITY OF THE CITY OF GREENSBORO.	PO Box 21287	Greensboro	NC	27401	51,163	10
MANCHESTER HOUSING & REDEVELOPMENT AUTHORITY.	198 Hanover Street	Manchester	NH	03104	78,600	9
NEW HAMPSHIRE HOUSING FINANCE AGENCY.	PO Box 5087	Manchester	NH	03110	175,334	21
STATE OF NJ DEPT. OF COMM. AFFAIRS.	101 South Broad Street	Trenton	NJ	08625	464,718	50
ROCHESTER HOUSING AUTHORITY.	675 West Main St.	Rochester	NY	14611	60,733	12
HOUSING AUTHORITY OF THE CITY OF SALEM.	360 Church Street SE	Salem	OR	97301	69,531	13
AUSTIN HOUSING AUTHORITY.	PO Box 6159	Austin	TX	78704	199,179	25
HOUSTON HOUSING AUTHORITY.	2640 Fountain View	Houston	TX	77057	358,242	50
SAN ANTONIO HOUSING AUTHORITY.	PO Drawer 1300	San Antonio	TX	78204	157,476	25
HOUSING AUTHORITY OF THE CITY OF OGDEN.	1100 Grant Avenue	Ogden	UT	84404	29,162	5
RICHMOND REDEVELOPMENT & HOUSING AUTHORITY.	PO Box 26887	Richmond	VA	23220	315,173	40
FAIRFAX COUNTY REDEVELOPMENT & HSG AUTHORITY.	3700 Pender Drive	Fairfax	VA	22030	37,693	3
HA OF KING COUNTY	600 Andover Park West	Seattle	WA	98188	92,178	10
HA CITY OF TACOMA	902 S L Street	Tacoma	WA	98405	171,216	20
HOUSING AUTHORITY OF THE CITY OF VANCOUVER.	2500 Main Street	Vancouver	WA	98660	176,040	30
HOUSING AUTHORITY CITY OF BELLINGHAM.	PO Box 9701	Bellingham	WA	98225	63,919	10

2010 VASH SET-ASIDE RECIPIENTS—Continued

Recipient	Address	City	State	Zip Code	Amount	Vouchers
HA CITY OF SPOKANE	55 W Mission Avenue	Spokane	WA	99201	126,636	25

[FR Doc. 2011–19117 Filed 7–27–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Certificate of Degree of Indian or Alaska Native Blood (CDIB); Request for Comments

AGENCIES: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission to the Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on renewal of the Office of Management and Budget (OMB) approval for the collection of information for the request for the Certificate of Degree of Indian or Alaska Native Blood (CDIB). The information collection is currently authorized by OMB Control Number 1076–0153, which expires on July 31, 2011.

DATES: Interested persons are invited to submit comments on or before *August 29, 2011.*

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@ omb.eop.gov.* Please send a copy of your comments to Debbie McBride, Acting Deputy Director—Office of Indian Services, Bureau of Indian Affairs, 1849 C Street, NW., MS 4513, Washington, DC 20240; e-mail *Debbie.McBride@bia.gov.*

FOR FURTHER INFORMATION CONTACT: De Springer (402) 878–2502. To see a copy of the entire collection submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

I. Abstract

BIA is seeking renewal of the approval for the information collection conducted under the numerous laws authorizing BIA to administer program services to Indians, provided that the individual possess a minimum degree of Indian or Alaska Native blood. When applying for program services authorized by these laws, an applicant must provide acceptable documentation to prove that he or she meets the minimum required degree of Indian or Alaska Native blood. Currently, the BIA certifies an individual's degree of Indian or Alaska Native blood if the individual can provide sufficient information to prove his or her identity and prove his or her descent from an Indian ancestor(s) listed on historic documents approved by the Secretary of the Interior that include blood degree information. To obtain the CDIB, the applicant must fill out an application form and provide supporting documents. BIA is seeking renewal of OMB approval to collect the information necessary to issue CDIBs. One minor non-substantive change is being made to the CDIB application form, to clarify where the applicant should submit the form.

II. Request for Comments

The BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires July 31, 2011.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0153.

Title: Request for Certificate of Degree of Indian or Alaska Native Blood.

Brief Description of Collection: Submission of this information allows BIA to verify the applicant's Indian ancestry and to determine the applicant's degree of Indian blood. The applicant will provide information, such as birth certificates, death certificates, and probates to document the applicant's descent from an Indian ancestor(s). Response to the information collection is required to obtain a benefit. BIA uses historic roll(s) or other documents that list the ancestors' name, gender, date of birth, date of death, blood degree and other identifying information to verify the applicant's descent. After the information and supporting documentation has been verified, BIA will issue a CDIB to the applicant. The applicant may use the CDIB to help document their eligibility for BIA programs and services. Other agencies may also rely on a CDIB as proof of eligibility for certain programs and services. CDIBs do not establish membership in an Indian tribe. A CDIB is not an enrollment document.

Type of Review: Extension without change of a currently approved collection.

Respondents: Individuals.

Number of Respondents: 154,980 per year, on average.

Total Number of Responses: 154,980 per year, on average.

Frequency of Response: Once.

Estimated Time per Response: 1.5 hours.

Estimated Total Annual Burden: 232,470 hours.

Estimated Cost Burden; $ 6,199,200.

Dated: July 20, 2011.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–19062 Filed 7–27–11; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

New Agency Information Collection for Solicitation of Nominations for the Advisory Board for Exceptional Children; Request for Comments

AGENCIES: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE) is submitting to the Office of Management and Budget (OMB) a proposed collection of information that will allow BIE to obtain information from individuals on their qualifications to serve on the Advisory Board for Exceptional Children under the Individuals with Disabilities Education Improvement Act. This notice is not requesting nominations; it is requesting comment on the information BIE may collect in the future for nominations by a separate **Federal Register** notice.

DATES: Interested persons are invited to submit comments on or before August 29, 2011.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to Sue Bement, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, P.O. Box 1088, Albuquerque, New Mexico 87103–1088; e-mail: *anita.bement@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Sue Bement, Education Specialist, telephone (505) 563–5274; *e-mail: anita.bement@bie.edu.* To see a copy of the entire collection submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

I. Abstract

BIE is seeking approval for an information collection that would allow it to collect information regarding individuals' qualifications to serve on the Federal advisory committee known as the Advisory Board for Exceptional Children. This information collection would require persons interested in being nominated to serve on the Board to provide information regarding their qualifications. A Membership Nomination Form would also be part of the information collection.

The Individuals with Disabilities Education Improvement Act (IDEA) of 2004, (20 U.S.C. 1400 *et seq.*) requires the Bureau of Indian Education (BIE) to establish an Advisory Board on Exceptional Education. *See* 20 U.S.C. 1411(h)(6). Advisory Board members shall serve staggered terms of 2 years or 3 years from the date of their appointment. This Board is currently in operation; this information collection will allow BIE to better manage the nomination process for future appointments to the Board.

II. Request for Comments

BIE requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–NEW.

Title: Solicitation of Nominations for the Advisory Board for Exceptional Children

Brief Description of Collection: Submission of this information allows BIE to review the qualifications of individuals seeking nomination to the Advisory Board for Exceptional Children under the Individuals with Disabilities Education Improvement Act. The information collection includes a Membership Nomination Form and requests information on qualifications, experience, and expertise on the education of Indian children with disabilities. Response is required to obtain a benefit.

Type of Review: Proposed information collection.

Respondents: Individuals.

Number of Respondents: 30 per year, on average.

Total Number of Responses: 30 per year, on average.

Frequency of Response: Once.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 30 hours.

Dated: July 20, 2011.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–19061 Filed 7–27–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Alabama and Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management—Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The surveys were requested by the Bureau of Indian Affairs.

The lands surveyed are:

St. Stephens Meridian, Alabama

T. 2 N., R. 5 E.

The plat of survey represents the dependent resurvey of a portion of the South boundary, a portion of the subdivisional lines, and the survey of the subdivision of Sections 27, 28, and 34, and trust parcels no. 1, 2A, 2B, 3, 7, 14, 15, 16, and 22, in Township 2 North, Range 5 East, of the St. Stephens Meridian, in the State of Alabama, and was accepted June 29, 2011.

Fourth Principal Meridian, Wisconsin

T. 28 N., R. 16 E.

The plat of survey represents the dependent resurvey of a portion of the East boundary of Section 13 and informational traverses of a portion of the Moshawquit Public Beach Road and a private drive, in Township 28 North, Range 16 East, of the Fourth Principal Meridian, in the State of Wisconsin, and was accepted June 30, 2011.

We will place a copy of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plats until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: July 21, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–19057 Filed 7–27–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Fourth Principal Meridian, Wisconsin

T. 27 N., R. 5 W.

The plat of survey represents the dependent resurvey of a portion of the East boundary, a portion of the subdivisional lines, and the subdivision of Sections 12 and 13, in Township 27 North, Range 5 West, in the State of Wisconsin, and was accepted July 11, 2011.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: July 21, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–19058 Filed 7–27–11; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Computer Forensic Devices and Products Containing the Same,* DN 2834; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of MyKey Technologies Inc. on July 22, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computer forensic devices and products containing the same. The complaint names as respondents Data Protection Solutions by Arco of FL; CRU Acquisitions Group LLC of WA; CRU–Data Port LLC of WA; Digital Intelligence, Inc. of WI; Diskology, Inc. of CA; Guidance Software, Inc. of CA; Guidance Tableau LLC of CA; Ji2, Inc. of CA; MultilMedia Effects, Inc. of Canada; Voom Technologies, Inc. of MN; and YEC Co. Ltd. of Japan.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2834'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: July 25, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–19100 Filed 7–27–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain DC–DC Controllers and Products Containing the Same,* DN 2833; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Richtek Technology Corp. and Richtek USA, Inc. on July 21, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain DC–DC controllers and products containing the same. The complaint names as respondents uPI Semiconductor Corp. of Taiwan and Sapphire Technology Limited of China.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2833'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential

treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: July 21, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–19014 Filed 7–27–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–792]

In the Matter of Certain Static Random Access Memories and Products Containing Same; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Action.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 10, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cypress Semiconductor Corporation of San Jose, California. An amended complaint was filed on June 27, 2011 and a letter supplementing the amended complaint was filed on June 28, 2011. A second amended complaint was filed on July 13, 2011. The second amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain static random access memories and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,534,805 (''the '805 patent''); U.S. Patent No. 6,651,134 (''the '134 patent''); U.S. Patent No. 7,142,477 (''the '477 patent''); and U.S. Patent No. 6,262,937 (''the '937 patent''). The second amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The second amended complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on July 21, 2011, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain static random access memories and products containing same that infringe one or more of claims 1, 2, and 4–6 of the '805 patent; claims 1, 2, and 12–15 of the '134 patent; claims 8 and 9 of the '477 patent; and claims 1, 2, 6, 12, and 13 of the '937 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Cypress Semiconductor Corporation, 198 Champion Court, San Jose, CA 95134.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

GSI Technology, Inc., 1213 Elko Drive, Sunnyvale, CA 94089.

Alcatel-Lucent, 54, rue La Boétie, 75008 Paris, France.

Alcatel-Lucent USA, Inc., 600–700 Mountain Avenue, Murray Hill, NJ 07974.

Telefonaktiebolaget LM Ericsson, Torshamnsgatan 23, Kista, Stockholm, SE–164 83, Sweden.

Ericsson Inc., 6300 Legacy Drive, Plano, TX 75024.

Motorola Solutions, Inc., 1303 East Algonquin Road, Schaumburg, IL 60196.

Motorola Mobility, Inc., 600 North U.S. Highway 45, Libertyville, IL 60048.

Arrow Electronics, Inc., 50 Marcus Drive, Melville, NY 11747.

Nu Horizons Electronics Corp., 70 Maxess Road, Melville, NY 11747.

Cisco Systems, Inc., 170 W. Tasman Drive, San Jose, CA 95134.

Hewlett Packard Company/Tipping Point, 3000 Hanover Street, Palo Alto, CA 94304.

Avnet, Inc., 2211 S. 47th Street, Phoenix, AZ 85034.

Nokia Siemens Networks US, LLC, 6000 Connection Drive, Irving, TX 75039.

Nokia Siemens Networks B.V., Werner von Siemensstraat 7, Zoetermeer, 2712PN, Netherlands.

Tellabs, 1 Tellabs Center, 1415 W. Diehl Road, Naperville, IL 60563.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the second amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the

second amended complaint and the notice of investigation. Extensions of time for submitting responses to the second amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the second amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the second amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the second amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: July 21, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–19012 Filed 7–27–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–793]

In the Matter of Certain Flat Panel Display Devices, and Products Containing the Same; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 27, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of AU Optronics Corporation of Taiwan and AU Optronics Corporation America of Milpitas, California. A letter supplementing the complaint was filed on July 12, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flat panel display devices and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,281,955 (''the '955 patent''); U.S. Patent No. 7,697,093 (''the '093 patent''); U.S. Patent No. 7,286,192 (''the '192 patent''); U.S. Patent No. 6,818,967 (''the '967 patent''); U.S. Patent No. 7,199,854 (''the '854 patent''); and U.S. Patent No. 7,663,729 (''the '729 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 21, 2011, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flat panel display devices and products containing the same that infringe one or more of claims 1–16 of the '955 patent; claims 5, 6, 8, 15, and 33 of the '093 patent; claims 1, 2, 5, and 9 of the '192 patent; claims 1 and 2 of the '967 patent; claims 1, 4, 6, 9, 10, and 14 of the '854 patent; and claims 1–10 of the '729 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

AU Optronics Corporation, No. 1 Li-Hsin Road 2, Hsinchu Science Park, Hsinchu 30078, Taiwan.

AU Optronics Corporation America, 1525 McCarthy Boulevard, Suite 216, Milpitas, CA 95035.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., Samsung Electronics Building, 1320–10, Seocho 2-dong, Seocho-gu, Seoul, Korea 137–857.

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, NJ 07660.

AT&T, Inc., 208 South Akard Street, Dallas, TX 75202–4206.

Best Buy Co., Inc., 7601 Penn Avenue South, Richfield, MN 55423.

BrandsMart USA, Inc., 3200 SW 42nd Street, Hollywood, FL 33312.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to

the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: July 21, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–19013 Filed 7–27–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Certification of the Attorney General; Panola County, Mississippi

In accordance with Section 8 of the Voting Rights Act, 42 U.S.C. 1973f, I hereby certify that in my judgment the appointment of federal observers is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Panola County, Mississippi. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made under Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), and published in the **Federal Register** on August 7, 1965. *See* 30 FR 9897).

Dated: July 22, 2011.

Eric H. Holder Jr.,

Attorney General of the United States.

[FR Doc. 2011–19033 Filed 7–27–11; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Design of Excavation Cave-in Protection Systems

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Design of Excavation Cave-in Protection Systems,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or August 29, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The design of cave-in protection systems is needed by employers in the construction industry and OSHA compliance officers to ensure cave-in protection systems are designed, installed, and used in a manner to protect workers adequately. Regulations 29 CFR 1926.652 paragraphs (b) and (c) contain paperwork requirements that impose burden hours or costs on employers. These paragraphs require employers to use protective systems to prevent cave-ins during excavation work; these systems include sloping the side of the trench, benching the soil away from the excavation, or using a support system or shield (such as a trench box). The Standard specifies allowable configurations and slopes for excavations, and provides appendices to assist employers in designing protective systems. The regulations also provide options to how the required records are developed.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0137. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on April 6, 2011 (76 FR 19129).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0137. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title of Collection: Design of Excavation Cave-in Protection Systems.

OMB Control Number: 1218–0137.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 11,800.

Total Estimated Number of Responses: 11,965.

Total Estimated Annual Burden Hours: 11,813.

Total Estimated Annual Other Costs Burden: $578,672.

Dated: July 21, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–19015 Filed 7–27–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quarterly Census of Employment and Wages

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Quarterly Census of Employment and Wages,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 29, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Quarterly Census of Employment and Wages data, which are provided to the BLS by State Workforce Agencies, are used by the BLS as a sampling frame for its establishment surveys; for publishing of accurate current estimates of employment for the U.S., States, counties, and metropolitan areas; and publishing quarterly census totals of local establishment counts, employment, and wages. The Bureau of Economic Analysis uses the data to produce accurate personal income data in a timely matter for the U.S., States, and local areas. Finally, the data are critical to the Employment Training Administration to administer unemployment insurance programs.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0012. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 22, 2011 (76 FR 15999).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0012. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Quarterly Census of Employment and Wages.

OMB Control Number: 1220–0012.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Burden Hours: 1,031,680.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–19046 Filed 7–27–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Equal Access to Justice Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the information collection request (ICR) titled, ''Equal Access to Justice Act,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 29, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of the Assistant Secretary and Management (OASAM), Office of Management and Budget, Room 10235,

Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth, by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act provides for payment of fees and expenses to eligible parties who have prevailed against the Department in certain administrative proceedings. In order to obtain an award, the statute and associated regulations (29 CFR part 16) require the filing of an application which shows that the party is a prevailing party and is eligible to receive an award under the Act. The DOL regulations implementing the Equal Access to Justice Act contain a subpart that specifies the contents of applications of an award. 29 CFR part 16, subpart B.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1225–0013. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 21, 2011 (76 FR 15341).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1225–0013. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of the Assistant Secretary and Management (OASAM).

Title of Collection: Equal Access to Justice Act.

OMB Control Number: 1225–0013.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Burden Hours: 50.

Total Estimated Annual Other Costs Burden: $20.

Dated: July 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–19016 Filed 7–27–11; 8:45 am]

BILLING CODE 4510–43–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Notice; Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of the Standard Form 425, Federal Financial Report and the SF–425A, Federal Financial Report Attachment. Both forms are used in reporting financial information under grants and cooperative agreements.

DATES: Comments must be received by September 26, 2011. Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

ADDRESSES: Comments may be sent through regulations.gov, a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''FFR renewal'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–7844; fax 202–395–3952; e-mail *mpridgen@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen at the addresses noted above.

SUPPLEMENTARY INFORMATION: In the Paperwork Reduction Act notice published on August 13, 2008 [73 FR 47246], OMB directed Federal agencies to transition their grant and cooperative agreement recipients from using the Standard Forms 269, 269A, 272, and 272A to using the Standard Form (SF) 425, Federal Financial Report and Standard Form 425A, Federal Financial Report Attachment by no later than October 1, 2009. With this first renewal cycle for the SF–425 and SF–425A, the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of the Standard Form 425, Federal Financial Report and the SF–425A, Federal Financial Report Attachment, which are posted at *http://www.whitehouse.gov/omb/grants_forms*. We are particularly interested in feedback on (1) How the SF–425 and SF–425A are an improvement over the data collections they replaced (SF–269, SF–269A, SF–272, and SF–272A); (2) how using a specification for a data exchange or other data model instead of structured forms could facilitate the submission and collection of the financial data identified in the SF–425 and SF–425A; and (3) any proposals, use cases, specifications, or models for eliminating redundancies in reporting grant financial information and increasing its usefulness regardless of how the

financial information is reported (form, data input, system-to-system, etc.)

OMB Control No.: 0348–0061.

Title: Federal Financial Report.

Form No.: SF–425, SF–425A.

Type of Review: Renewal of a currently approved collection.

Respondents: States, Local Governments, Universities, Non-Profit Organizations.

Number of Responses: 1,200,000.

Estimated Time per Response: 60 minutes.

Needs and Uses: The SF–425 is used to collect financial information for recipients of grants and cooperative agreements and related transactions under nonconstruction grant programs.

Debra J. Bond,

Deputy Controller.

[FR Doc. 2011–19120 Filed 7–27–11; 8:45 am]

BILLING CODE

NUCLEAR REGULATORY COMMISSION

[Docket No. 04009067; NRC–2008–0339]

Notice of Issuance of Materials License SUA–1597 and Record of Decision for Uranerz Energy Corporation Nichols Ranch In Situ Recovery Project

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of issuance of materials license SUA–1597.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC or the Commission) has issued a license to Uranerz Energy Corporation (Uranerz) for its Nichols Ranch uranium *in situ* recovery (ISR) Project in Johnson and Campbell Counties, Wyoming. Materials License SUA–1597 authorizes Uranerz to operate its facilities as proposed in its license application, as amended, and to possess uranium source and byproduct material at the Nichols Ranch ISR Project. Furthermore, Uranerz will be required to operate under the conditions listed in Materials License SUA–1597.

This notice also serves as the record of decision for the NRC decision to approve Uranerz's license application for the Nichols Ranch facility and issue Materials License SUA–1597. This record of decision satisfies the regulatory requirement in Section 51.102(a) of Title 10 of the *Code of Federal Regulations (10 CFR),* which requires a Commission decision on any action for which a final environmental impact statement has been prepared to be accompanied by or include a concise public record of decision.

The NRC considers the entire publicly available record for a license application to constitute the agency's record of decision. Documents related to the application carry docket number 04009067. These documents for the Nichols Ranch ISR Project include the license application (including the applicant's environmental report) (ML080080600), the Commission's Safety Evaluation Report (SER) published in July 2011 (ML102240206) and the Commission's Final Supplemental Environmental Impact Statement (FSEIS) (NUREG–1910, Supplement 2) published in January 2011 (ML103440120). The record of decision also includes the applicable portions of the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (NUREG–1910) as incorporated by reference in the FSEIS.

As discussed in the Nichols Ranch FSEIS, the Commission considered a range of alternatives. The reasonable alternatives discussed in detail were the applicant's proposal as described in its license application to conduct in-situ uranium recovery on the site and the no-action alternative. Other alternatives considered but eliminated from detailed analysis include conventional uranium mining and milling, conventional mining and heap leach processing, alternative site location, alternate lixiviants, and alternate wastewater treatment methods. The factors considered when evaluating the alternatives, discussion of preferences among the alternatives, and license conditions and monitoring programs related to mitigation measures are also discussed in the Nichols Ranch FSEIS. The FSEIS also contained the NRC staff recommendation to the Commission, related to the environmental aspects of the proposed action that the source material license should be issued as requested, unless safety issues mandate otherwise.

The NRC has found that the application for the source materials license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR 40.32(b–c), the staff has found that Uranerz is qualified by reason of training and experience to use source material for the purpose it requested and Uranerz's proposed equipment and procedures for use at its Nichols Ranch Project are adequate to protect public health and minimize danger to life or property. The NRC staff's review supporting these findings is documented in the SER. The NRC staff also concluded, in accordance with 10 CFR 40.32(d), that issuance of Materials License SUA–1597 to Uranerz will not be inimical to the common defense and security or to the health and safety of the public. The staff also found in accordance with 10 CFR 40.32(e), after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of License Amendment No. 1 to Materials License SUA–1597.

Uranerz's request for a materials license was previously noticed in the **Federal Register** on June 16, 2008 (73 FR 34052), with a notice of an opportunity to request a hearing. The NRC did not receive any requests for a hearing on the license application.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' the details with respect to this action, including the SER and accompanying documentation and license, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1	Applicant's application, November 30, 2007	ML080080594
2	Revisions to application, August 21, 2008	ML083230892
3	Response to Request for Additional Information, March 11, 2009	ML090820568
4	Generic Environmental Impact Statement for In Situ Leach Uranium Milling Facilities, May 2009	ML091530075
5	Response to Open Issues in Safety Evaluation Report, February 24, 2010	ML100740143
6	Text Revisions to Open Issues to the Safety Evaluation Report, September 15, 2010	ML102650554
7	Revised Table of Contents to Technical Report, September 22, 2010	ML102730116
8	Supplemental Environmental Impact Statement for the Nichols Ranch *In-Situ* Recovery Project, January 2011.	ML103440120
9	NRC Safety Evaluation Report, July 2011	ML102240206

10	Source Materials License for Nichols Ranch, July 19, 2011	ML111751649

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or via e-mail to *PDR.Resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Ron C. Linton, Project Manager, Uranium Recovery Licensing Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* (301) 415–7777; *fax number:* (301) 415–5369; e-mail: *ron.linton@nrc.gov*.

Dated at Rockville, Maryland this 19th day of July, 2011.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–19097 Filed 7–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–354 [NRC–2009–0391]

PSEG Nuclear LLC, Hope Creek Generating Station; Notice of Issuance of Renewed Facility Operating License No. NPF–57 for an Additional 20-Year Period; Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License No. NPF–57 to PSEG Nuclear LLC (licensee), the operator of the Hope Creek Generating Station (HCGS). Renewed Facility Operating License No. NPF–57 authorizes operation of HCGS by the licensee at reactor core power levels not in excess of 3,840 megawatts thermal in accordance with the provisions of the HCGS renewed license and its technical specifications.

The notice also serves as the record of decision for the Renewal of Facility Operating License No. NPF–57, consistent with Title 10 of the *Code of Federal Regulations* Section 51.103 (10 CFR 51.103). As discussed in the final supplemental environmental impact statement (FSEIS) for HCGS and Salem Nuclear Generating Station (Salem), Units 1 and 2, dated March 2011, the Commission has considered a range of reasonable alternatives that included coal fired generation, natural gas combined-cycle generation, combined alternative, and the no-action alternative. The factors considered in the record of decision can be found in the FSEIS published in March 2011 as NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, Supplement 45, Regarding Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2.''

HCGS is a boiling water reactor located in Lower Alloways Creek Township, Salem County, New Jersey. The application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on October 23, 2009 (74 FR 54856).

For further details with respect to this action, see: (1) PSEG Nuclear LLC's license renewal application for Hope Creek Generating Station dated August 18, 2009, as supplemented by letters dated through May 19, 2011; (2) the Commission's safety evaluation report (NUREG–2102), published in June 2011; (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 45), for the Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, published in March 2011. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of renewed Facility Operating License No. NPF–57 (ADAMS Accession No. ML11116A197) may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the Hope Creek Generating Station safety evaluation report (NUREG–2102) and the final environmental impact statement (NUREG–1437, Supplement 45) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161 (*http://www.ntis.gov*), 703–605–6000, or *Attention:* Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 20th day of July 2011.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–19096 Filed 7–27–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–25; Order No. 767]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Unionville, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* August 5, 2011; *deadline for notices to intervene:* August 16, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system

at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 404(d), on July 21, 2011, the Commission received a petition for review of the closing of the post office in Unionville, Iowa. The petition, which was filed by Dorothy Jean Smith (Petitioner), is postmarked July 11, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–25 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than August 25, 2011.

Categories of issues apparently raised. Petitioner appears to contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is August 5, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is August 5, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

All documents filed will be posted on the Commission's Web site. The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before August 16, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than August 5, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than August 5, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

July 21, 2011	Filing of Appeal.
August 5, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
August 5, 2011	Deadline for the Postal Service to file any responsive pleading.
August 16, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
August 25, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
September 14, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
September 29, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
October 6, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 8, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–19106 Filed 7–27–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 10A–1; SEC File No. 270–425; OMB Control No. 3235–0468.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10A–1 (17 CFR 240.10A–1) implements the reporting requirements in Section 10A of the Exchange Act (15 U.S.C. 78j–1) which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law 104–67, 109 Stat 737. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditor that: (1) There is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*).

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 21, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19054 Filed 7–27–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Form F–6; OMB Control No. 3235–0292; SEC File No. 270–270.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form F–6 (17 CFR 239.36) is a form used by foreign companies to register the offer and sale of American Depositary Receipts (ADRs) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form F–6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. Form F–6 takes approximately 1 hour per response to prepare and is filed by 150 respondents annually. We estimate that 25% of the 1 hour per response (0.25 hours) is prepared by the filer for a total annual reporting burden of 37.5 hours (0.25 hours per response × 150 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 22, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19053 Filed 7–27–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29735; File No. 812–13909]

ING Asia Pacific High Dividend Equity Income Fund, et al.; Notice of Application

July 21, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company

Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

Summary of Application: Applicants request an order (''Order'') to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as monthly in any taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

Applicants: ING Asia Pacific High Dividend Equity Income Fund (''IAE''), ING Emerging Markets High Dividend Equity Fund (''IHD''); ING Global Advantage and Premium Opportunity Fund (''IGA''); ING Global Equity Dividend and Premium Opportunity Fund (''IGD''); ING Infrastructure, Industrials and Materials Fund (''IDE''); ING International High Dividend Equity Income Fund (''IID''); ING Prime Rate Trust (''PRT''); ING Risk Managed Natural Resources Fund (''IRR,'' together with IAE, IHD, IGA, IGD, IDE, IID and PRT, the ''Current Funds''); ING Investments, LLC (''IIL''); ING Investment Management Co. (''ING IM''); and Directed Services LLC (''DSL'', together with IIL and ING IM, the ''Investment Advisers'').

DATES: *Filing Dates:* The application was filed on May 26, 2011, and amended on July 21, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 15, 2011, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Jeffrey S. Puretz, Dechert LLP, 1775 I Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Current Fund is a registered closed-end management investment company and is organized as a Delaware statutory trust, with the exception of PRT (which is organized as a Massachusetts business trust).[1] The common shares of the Current Funds are listed on the New York Stock Exchange. PRT has also issued preferred shares. Each Current Fund reserves the right to issue preferred shares in the future. Applicants believe that investors in the common shares of the Current Funds may prefer an investment vehicle that provides regular/monthly distributions and a steady cash flow.

2. IIL, an Arizona limited liability company, acts as the Current Funds' investment adviser. ING IM, a Connecticut corporation, acts as a sub-adviser to certain of the Current Funds. DSL, a Delaware limited liability company, is an investment adviser under common control with IIL and ING IM. Each of IIL, ING IM and DSL is a registered investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act'') and is an indirect, wholly-owned subsidiary of ING Groep N.V. (''ING Groep''). ING Groep is a global financial institution of Dutch origin.[2] Each future Investment Adviser to a Fund will be registered under the Advisers Act.

3. Applicants state that, prior to a Fund's implementing a distribution plan in reliance on the Order, the Board of Trustees (the ''Board'') of the Fund, including a majority of the trustees who are not ''interested persons,'' of such Fund as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), shall have requested, and the Investment Advisers shall have provided, such information as is reasonably necessary to make an informed determination on whether the Board should adopt a proposed distribution policy. In particular, the Board and the Independent Trustees shall have reviewed information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on such Fund's long-term total return (in relation to market price and its net asset value per common share (''NAV'')) and the relationship between such Fund's distribution rate on its common shares under the policy and such Fund's total return (in relation to NAV); whether the rate of distribution would exceed such Fund's expected total return in relation to its NAV; and any foreseeable material effects of such policy on such Fund's long-term total return (in relation to market price and NAV). The Independent Trustees shall also have considered what conflicts of interest the Investment Advisers and the affiliated persons of the Investment Advisers and each such Fund might have with respect to the adoption or implementation of such policy. Applicants state that, only after considering such information shall the Board, including the Independent Trustees, of a Fund approve a distribution policy with respect to such Fund's common shares (the ''Plan'') and in connection with such approval shall have determined that such Plan is consistent with a Fund's investment objectives and in the best interests of a Fund's common shareholders.

4. Applicants state that the purpose of a Plan would be to permit a Fund to distribute over the course of each year, through periodic distributions as nearly equal as practicable and any required special distributions, an amount closely approximating the total taxable income of such Fund during such year and, if

[1] Applicants request that any Order issued granting the relief requested in the application also apply to any registered closed-end investment company currently advised or to be advised in the future by IIL, ING IM or DSL (including any successor in interest) or by an entity controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with IIL, ING IM or DSL (such entities, together with IIL, ING IM and DSL, the ''Investment Advisers'') that decides in the future to rely on the requested relief. Any closed-end investment company that relies on the Order in the future will comply with the terms and conditions of the application (such investment companies together with the Current Funds, the ''Funds,'' and with the Investment Advisers, the ''Applicants''). All existing Funds currently intending to rely on the Order have been named as Applicants. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Prior to July 1, 2011, each applicant was able to rely on the exemptive order granted in the Matter of ING Clarion Real Estate Income Fund, *et al.*, Investment Co. Act Release Nos. 28329 (Jul. 8, 2008) (notice) and 28352 (Aug. 5, 2008) (order) (''Existing Order'') to make periodic distributions of long-term capital gains with respect to the Current Funds' outstanding common stock as frequently as twelve times each year and as frequently as distributions are specified in the terms of any outstanding preferred stock. As of July 1, 2011, due to a restructuring of ING Groep, applicants are no longer able to rely on the Existing Order.

so determined by its Board, all or a portion of the returns of capital paid by portfolio companies to such Fund during such year. It is anticipated that under the Plan of a Fund, such Fund would distribute to its respective common shareholders a fixed monthly percentage of the market price of such Fund's common shares at a particular point in time or a fixed monthly percentage of NAV at a particular time or a fixed monthly amount, any of which may be adjusted from time to time. It is anticipated that under a Plan, the minimum annual distribution rate with respect to such Fund's common shares would be independent of a Fund's performance during any particular period but would be expected to correlate with a Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of a Fund's performance for an entire calendar year and to enable a Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code (''Code'') for the fiscal year, it is anticipated that each distribution on the common shares would be at the stated rate then in effect.

5. Applicants state that prior to the implementation of a Plan for a Fund, the Board shall have adopted policies and procedures under rule 38a–1 under the Act that: (i) Are reasonably designed to ensure that all notices required to be sent to the Fund's shareholders pursuant to section 19(a) of the Act, rule 19a–1 thereunder and condition 4 below (each a ''19(a) Notice'') include the disclosure required by rule 19a–1 under the Act and by condition 2(a) below, and that all other written communications by the Fund or its agents regarding distributions under the Plan include the disclosure required by condition 3(a) below; and (ii) require the Fund to keep records that demonstrate its compliance with all of the conditions of the Order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

Applicants' Legal Analysis

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 under the Act limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (*e.g.,* estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). Applicants state that similar information is included in the Funds' annual reports to shareholders and on the Internal Revenue Service Form 1099 DIV, which is sent to each common and preferred shareholder who received distributions during a particular year.

4. Applicants further state that each of the Funds will make the additional disclosures required by the conditions set forth below, and each of them has adopted compliance policies and procedures in accordance with rule 38a–1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to shareholders. Applicants argue that by providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under the Plan and the conditions listed below, each Fund's shareholders would be provided sufficient information to understand that their periodic distributions are not tied to a Fund's net investment income and realized capital gains to date, and may not represent yield or investment return. Accordingly, Applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford shareholders no extra protection.

5. Applicants assert that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to the Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants note that the common stock of closed-end funds generally tends to trade in the marketplace at a discount to their NAVs. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of capital gain.

7. Applicants assert that the application of rule 19b–1 to a Plan actually gives rise to one of the concerns that rule 19b–1 was intended to avoid: Inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a periodic distribution plan imposes pressure on management: (i) Not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1; and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of capital gain distributions that a fund may make with respect to any one year, rule 19b–1 may prevent the normal and efficient operation of a periodic distribution plan whenever that fund's realized net long-term capital gains in any year exceed the total

of the periodic distributions that may include such capital gains under the rule.

8. In addition, Applicants assert that rule 19b–1 may cause fixed regular periodic distributions to be funded with returns of capital [3] (to the extent net investment income and realized short term capital gains are insufficient to fund the distribution), even though undistributed realized net long-term capital gains otherwise would be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan or to retain and pay taxes on the excess amount. Applicants thus assert that the requested Order would minimize these anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that has both common shares and preferred shares outstanding designate the types of income, *e.g.,* investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred share dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under rule 19b–1 for a tax year and still need to distribute additional capital gains allocated to the preferred shares to comply with Revenue Ruling 89–81.

10. Applicants assert the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred shares issued by a closed-end fund. Applicants assert that such distributions are either fixed, determined in periodic auctions, or determined by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred shares, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and like a debt security, is priced based upon its liquidation value, dividend rate, credit quality, and frequency of payment. Applicants assert that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for and do not expect the liquidation value of their shares to change.

12. Applicants request an order pursuant to section 6(c) of the Act granting an exemption from the provisions of section 19(b) of the Act and rule 19b–1 thereunder to permit each Fund to make periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of the Fund's preferred shares.

Applicants' Conditions

Applicants agree that, with respect to each Fund seeking to rely on the Order, the Order will be subject to the following conditions.

1. Compliance Review and Reporting

The Fund's chief compliance officer will: (a) Report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether: (i) The Fund and its Investment Adviser have complied with the conditions of the order; and (ii) a material compliance matter (as defined in rule 38a–1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

2. Disclosures to Fund Shareholders

(a) Each 19(a) Notice disseminated to the holders of the Fund's common shares, in addition to the information required by section 19(a) and rule 19a–1:

(i) Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) The fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) The average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) Will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income' '';[4] and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not

[3] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

[4] The disclosure in this condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099 DIV for the calendar year that will tell you how to report these distributions for Federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

(b) On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the Fund will:

(i) Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) Include the disclosure required by condition 2(a)(ii)(1) above;

(iii) State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund shareholders; and

(iv) Describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination; and

(c) Each report provided to shareholders under rule 30e–1 under the Act and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

3. Disclosure to Shareholders, Prospective Shareholders and Third Parties

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common shareholder, prospective common shareholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N–CSR; and

(c) The Fund will post prominently a statement on its (or the Investment Advisers') Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such Web site for at least 24 months.

4. Delivery of 19(a) Notices to Beneficial Owners

If a broker, dealer, bank or other person (''financial intermediary'') holds common shares issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. Additional Board Determinations for Funds Whose Shares Trade at a Premium

If:

(a) The Fund's common shares have traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Trustees:

(1) Will request and evaluate, and the Fund's Investment Advisers will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(2) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its shareholders, after considering the information in condition 5(b)(i)(1) above, including, without limitation:

(A) Whether the Plan is accomplishing its purpose(s);

(B) The reasonably foreseeable material effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(C) The Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

(ii) The Board will record the information considered by it, including its consideration of the factors listed in condition 5(b)(i)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. Public Offerings

The Fund will not make a public offering of the Fund's common shares other than:

(a) A rights offering below NAV to holders of the Fund's common shares;

(b) An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

(c) An offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent

distribution record date,[5] expressed as a percentage of NAV as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date,[6] and

(ii) The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common shares as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred shares as such Fund may issue.

7. Amendments to Rule 19b–1

The requested order will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19052 Filed 7–27–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission (''SEC'') and the Commodity Futures Trading Commission (''CFTC'') will hold public roundtable discussions on Monday, August 1, 2011, at the CFTC's headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

The meeting will begin at 9 a.m. and will be open to the public, with seating made available on a first-come, first-served basis. Visitors will be subject to security checks. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes panel discussions addressing various international issues related to the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

For further information, please contact the CFTC's Office of Public Affairs at (202) 418–5080 or the SEC's Office of Public Affairs at (202) 551–4120.

Dated: July 25, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19181 Filed 7–26–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64948; File No. SR–NASDAQ–2011–077]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Adopt a Risk Monitor Mechanism

July 22, 2011.

I. Introduction

On June 1, 2011, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new risk monitor mechanism. The proposed rule change was published for comment in the **Federal Register** on June 13, 2011.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

NASDAQ proposes to adopt new Chapter VI, Section 19, Risk Monitor Mechanism[4] to provide protection from the risk of multiple executions across multiple series of an option. The Exchange proposes to offer the Risk Monitor Mechanism functionality to all Participant types to help liquidity providers generally, Market Makers and other participants alike, in managing risk and providing deep and liquid markets to investors. The Exchange believes that the Risk Monitor Mechanism will be most useful for Market Makers,[5] who are required to continuously quote in assigned options. Quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose the Market Maker to unnecessary market risk. The Risk Monitor Mechanism is intended to assist such Participants in managing their market risk. The Exchange also believes that firms that trade on a proprietary basis and provide liquidity to the Exchange could potentially benefit, similarly to Market Makers, from the Risk Monitor Mechanism.

Pursuant to proposed Section 19(a), the Risk Monitor Mechanism operates by the System maintaining a counting program for each Participant, which counts the number of contracts traded in an option by each Participant within a specified time period, not to exceed 15 seconds, established by each Participant (the ''specified time period''). The specified time period will commence for an option when a transaction occurs in any series in such option. Furthermore, the System engages the Risk Monitor Mechanism in a particular option when the counting program has determined that a Participant has traded a Specified Engagement Size (as defined below) established by such Participant during the specified time period. When such Participant has traded the Specified Engagement Size during the specified time period, the Risk Monitor Mechanism automatically removes such Participant's orders in all series of the particular option.

As provided in proposed subparagraph (b)(ii), the Specified Engagement Size is determined by the following: (A) For each series in an option, the counting program will determine the percentage that the number of contracts executed in that series represents relative to the Participant's total size at all price levels in that series (''series percentage''); (B) The counting program will determine the sum of the series percentages in the option issue (''issue percentage''); (C) Once the counting program determines that the issue percentage equals or exceeds a percentage established by the Participant (''Specified Percentage''), the

[5] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[6] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64616 (June 7, 2011), 76 FR 34281 (''Notice'').

[4] The proposal is very similar to NASDAQ OMX PHLX (''PHLX'') Rule 1093 and is intended to bring this aspect of PHLX's technological functionality to NOM.

[5] Unlike the PHLX Risk Monitor Mechanism, the NOM Risk Monitor Mechanism will be available to all Participants, not just Market Makers.

number of executed contracts in the option issue equals the Specified Engagement Size.

While the Risk Monitor Mechanism serves an important risk management purpose, the Exchange states that it operates consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, proposed paragraph (c) provides that any marketable orders or quotes that are executable against a Participant's quotation that are received prior to the time the Risk Monitor Mechanism is engaged will be automatically executed at the price up to the Participant's size, regardless of whether such an execution results in executions in excess of the Participant's Specified Engagement Size. Accordingly, the Risk Monitor Mechanism cannot be used to circumvent a Participant's firm quote obligation.

Proposed Section 19(d) further provides that the system will automatically reset the counting program and commence a new specified time period when: (i) A previous counting period has expired and a transaction occurs in any series in such option; or (ii) the Participant refreshes his/her quotation, in a series for which an order has been executed (thus commencing the specified time period) prior to the expiration of the specified time period.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[6] and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should provide NOM Participants assistance in effectively managing their quotations.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASDAQ–2011–077) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19051 Filed 7–27–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64864; File No. SR–DTC–2011–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend Rules Relating to the Early Redemption of Certificates of Deposit

July 12, 2011.

Correction

In notice document 2011–17957 appearing on pages 42149–42150 in the issue of Monday, July 18, 2011, make the following correction:

On page 42150, in the second column, in the 16th line, ''[insert date 21 days from publication in the **Federal Register**]'' should read ''August 8, 2011''.

[FR Doc. C1–2011–17957 Filed 7–27–11; 8:45 am]

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12704 and #12705]

Tennessee Disaster #TN–00058

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–4005–DR), dated 07/20/2011.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 06/18/2011 through 06/24/2011.

Effective Date: 07/20/2011.

Physical Loan Application Deadline Date: 09/19/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 04/20/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/20/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Claiborne, Grainger, Henderson, Knox, Loudon, Marion.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12704B and for economic injury is 12705B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–19161 Filed 7–27–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0057]

Social Security Ruling 11–1p; Titles II and XVI: Procedures for Handling Requests To File Subsequent Applications for Disability Benefits

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR)

SUMMARY: We are giving notice of SSR 11–1p, in which we explain our new

procedures for handling your request to file a disability claim when you have a pending claim of the same title and benefit type in our administrative review process. This change will allow us to more efficiently use our limited resources to handle the increase in the number of initial disability claims that we have seen in light of the economic downturn.

DATES: *Effective Date:* July 28, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Beth Rochowiak, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401 (410) 594–2302, or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: We are publishing this SSR in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, Supplemental Security Income, and special veteran's benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all of our components. 20 CFR 402.35(b)(1).

This SSR will be in effect until we publish a notice in the **Federal Register** that rescinds it or publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.006—Supplemental Security Income.)

Dated: July 22, 2011.

Michael J. Astrue,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Procedures for Handling Requests To File Subsequent Applications for Disability Benefits

Purpose: To explain our revised procedure under which we will no longer process a subsequent disability claim if you already have a claim under the same title and of the same type pending in our administrative review process.

Citations: Sections 202(j), 216(i), 223(a), and 1631(e) of the Social Security Act, as amended; Regulations No. 4, subpart G, sections 404.601, 404.603; subpart J, sections 404.900(b), 404.970(b), 404.976(b); and Regulations No. 16, subpart C, section 416.305; subpart N, sections 416.1400(b), 416.1470(b), 416.1476(b).

Introduction

In 1999, we adopted a procedure that allowed us to process a subsequent disability claim while your prior disability claim was pending at the Appeals Council level of our administrative review process.

Under that procedure, if you filed a subsequent application for disability benefits while you had a disability claim pending at the Appeals Council, we sent your subsequent claim to the disability determination services (DDS) or similar case-processing center for development and adjudication. If we denied your subsequent application at the earlier stages, and you requested a hearing before an administrative law judge (ALJ), the hearing office took no action until the Appeals Council completed its action on your prior claim.

We have seen an increase in the number of subsequent disability claims in recent years. When two disability claims under the same title and type are pending at the same time, there can be conflicting decisions that we must then reconcile. Subsequent claims may result in improper payments, increased administrative costs, and unnecessary workloads stemming from duplication. Because of these problems and the significant increase in the number of initial disability claims that we have experienced in recent years, we are changing our procedures for handling subsequent applications for disability claims of the same title and type.

Policy Interpretation

Under the new procedures we are adopting in this Ruling, generally you will no longer be allowed to have two claims for the same type of benefits pending at the same time. If you want to file a new disability claim under the same title and of the same type as a disability claim pending at any level of administrative review, you will have to choose between pursuing your administrative review rights on the pending disability claim or declining to pursue further administrative review and filing a new application. This Ruling explains our new procedures.

If You Choose To Pursue Your Pending Disability Claim Instead of Filing a New Claim Under the Same Title and of the Same Type

If you decide to pursue your administrative review rights on the pending disability claim, we will not accept your subsequent application for benefits under the same title and for the same type of benefit as the pending claim. Although we will not accept your subsequent application while your prior disability claim is pending administrative review, you can still provide us with evidence that is relevant to your pending claim, in accordance with our existing regulations and procedures. Our technological improvements, such as Electronic Records Express and electronic alerts and messages, enable our offices to communicate with one another faster and more efficiently and act on additional evidence promptly. If the additional evidence indicates a critical or dire need situation, we will act expeditiously.

Claim Pending at Initial, Reconsideration, or Hearing Level

The procedures in this Ruling do not preclude you from reporting new medical conditions or a worsening in your existing medical conditions, and you can submit additional evidence on these matters. We will forward any additional evidence you submit to the office that is handling the pending claim so that it can be associated with that claim.

You can submit any information or evidence that you feel is helpful to your pending disability claim. *See* 20 CFR 404.900(b) and 416.1400(b). In adjudicating the pending disability claim, we will consider the information and evidence you submit, together with all the other information in the claim folder. *Id.*

Claim Pending With the Appeals Council

If you choose to pursue your disability claim that is pending at the Appeals Council, and you submit additional evidence, the Appeals Council will first determine whether the additional evidence relates to the period on or before the date of the hearing decision. When the additional evidence is new and material and relates to the period on or before the date of the hearing decision, the Appeals Council will consider it, together with the entire record. 20 CFR 404.970(b), 416.1470(b), and 405.373.[1] The Appeals Council will

[1] In the six states that comprise our Boston Region (Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, and Connecticut), the Appeals Council must consider whether the evidence relates to the period on or before the hearing decision, whether there is a reasonable probability that the evidence would change the outcome of the decision, and one of the following: 1) our action misled you; 2) you had a physical, mental, educational, or linguistic limitation(s) preventing you from submitting the evidence earlier; or 3) some other unusual, unexpected, or unavoidable circumstance beyond your control that prevented

review your case if it finds that the ALJ's action, findings, or conclusion is contrary to the weight of the evidence currently of record. *Id.*

If the new and material evidence that relates to the period on or before the date of the hearing decision shows a critical or disabling condition, the Appeals Council will expedite its review of your pending claim.

When the additional evidence does not relate to the period on or before the date of your hearing decision, the Appeals Council will return the additional evidence to you. 20 CFR 404.976(b), 416.1476(b). The notice returning the additional evidence will explain why the Appeals Council did not accept the evidence and inform you that, under certain circumstances, we will consider the date you filed the request for Appeals Council review as the filing date for your new claim. If you originally filed for disability benefits under title II, and you file a new application for title II disability benefits within six months of the date of this notice, we will use the date of your request for Appeals Council review as the filing date. If both applications are for Supplemental Security Income payments based on disability under title XVI, and you file the new application within 60 days from the date of the notice, we will use the date you requested Appeals Council review as the filing date for the new claim. We will permit the filing of a new disability claim after the Appeals Council completes its action on the request for review of the pending claim.

If the additional evidence that does not relate to the period on or before your hearing decision shows a new critical or disabling condition, and you tell us that you want to file a new claim based on this evidence, the Appeals Council may permit you to file a new disability claim before it completes its action on your request for review of the pending claim.

If You Choose To Decline Further Review of Your Pending Disability Claim and Instead File a New Claim Under the Same Title and of the Same Type

If, on the other hand, you decide to decline to pursue further administrative review on the pending disability claim and file a new application, we will assess your eligibility for any other benefits and take applications for these benefits. When you received an unfavorable or partially favorable decision from us on your pending claim, we explained the effect that not pursuing an appeal might have on your possible entitlement to benefits.

If Your Subsequent Claim Does Not Involve the Same Title or Type of Benefit

This Ruling does not change the procedure we currently follow when you file a subsequent claim under a different title or for a different benefit type than a pending claim. When a subsequent claim under a different title or for a different benefit type shares a common issue with the pending claim, we will usually consolidate it with the pending claim through the hearing level. When you file a subsequent claim that is under a different title or is for a different benefit type and your prior claim is pending review at the Appeals Council, we will process the subsequent claim in accordance with our current procedures.

Cross-References: Program Operations Manual System, DI 12045.027 and DI 20101.025, DI 23015.005, DI 81010.155, DI 81020.120, GN 00201.005, GN 00204.028, GN 00206.001, GN 00206.015, GN 01010.030, GN 03104.370. GN 03104.380, GN 03104.385, GN 03104.390, GN 03104.400, GN 03104.400, SI 00601.030, SI 00601.048, SI 00601.050, SI 04040.025, SI 04040.027, Hearings, Appeals and Litigation Law Manual, I–3–1–7, I–3–5–20, I–3–5–90, I–4–2–30, I–4–2–1, I–5–1–13, and I–5–3–17.

[FR Doc. 2011–19103 Filed 7–27–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7537]

International Joint Commission Public Hearings on Binational Management of Lake of the Woods and Rainy River Watershed

The International Joint Commission (IJC) will hold public hearings on the final report of its International Lake of the Woods and Rainy River Watershed Task Force (Task Force).

The Task Force report to the IJC makes recommendations on how the United States and Canada could work together to better manage water quality, water quantity, and related issues in the international Lake of the Woods and Rainy River watershed.

Task Force recommendations address five themes to improve bi-national governance for priority issues in the watershed. These include a summit convened by the IJC to encourage the development of a watershed vision, common goals and objectives; combining two existing IJC Boards into a single International Watershed Board with a water quality mandate encompassing all boundary waters in the watershed (including Lake of the Woods); increased support for the existing International Multi-Agency Arrangement's work on water quality science efforts in the watershed; increased local participation in watershed management governance; and a review of water-level regulation on Lake of the Woods.

In June 2010, the Governments of Canada and the United States asked the IJC to examine and make recommendations regarding the bi-national management of the Lake of the Woods and Rainy River system and the IJC's potential role in this management. The IJC established the Task Force to review the ways that Canada and the United States work together to manage water quality, water quantity and related issues in the watershed, to identify gaps in the current approach, to identify key existing or emerging issues that require attention, and to recommend any new or adjusted governance mechanisms that would help address the identified issues.

The submission of the report marks the completion of the Task Force's work. The IJC is now inviting public comment on the report. Comments will be received at public meetings held August 15–20 at the following dates and times:

Dates	City	Meeting location	Central time
Monday, August 15	Fort Frances, ON	La Place Rendez Vous, 1201 Idlywild Dr	7 p.m.
Tuesday, August 16	International Falls, MN	Rainy River Community College Theatre, 1501 Highway 71.	6 p.m.—Board Meeting; 7:30 p.m.—IJC Hearing.
Wednesday, August 17	Cook, MN	Cook Ranger Station, 320 North Highway 53 55723	7 p.m.

you from submitting the evidence earlier. 20 CFR 405.373.

Dates	City	Meeting location	Central time
Thursday, August 18	Baudette, MN	Historic Rex—Hotel Event Room, 103 First Street, NW 56623.	7 p.m.
Friday, August 19	Stratton, ON	Kay-Nah-Chi-Wah-Nung (Rainy River First Nations Interpretation Center) Shaw Rd.	1 p.m.
Saturday, August 20	Kenora, ON	Lakeside Inn (Best Western), 470 First Avenue S	9 a.m.

The International Joint Commission will also accept written comments on the Task Force report via its IJC Web site (*http://www.ijc.org*), e-mail or regular mail at the addresses below until August 31, 2011.

Secretary, U.S. Section, International Joint Commission, 2000 L Street, NW., Suite 615, Washington, DC 20440, *Fax:* 202–632–2006, *E-mail: commission@washington.ijc.org.*

Secretary, Canadian Section, International Joint Commission, 234 Laurier Ave. West, 22nd Floor, Ottawa, ON K1P 6K6, *Fax:* 613–993–5583, *E-mail: commission@ottawa.ijc.org.*

Informed by the report and comments from the public, the IJC will make its recommendations to the U.S. and Canadian Governments by December 2011.

The International Joint Commission prevents and resolves disputes between the United States of America and Canada under the 1909 Boundary Waters Treaty and pursues the common good of both countries as an independent and objective advisor to the two governments.

Dated: July 22, 2011.

Charles A. Lawson,

Secretary, U.S. Section, International Joint Commission, Department of State.

[FR Doc. 2011–19113 Filed 7–27–11; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Assessment, Notice of Public Meetings, and Notice To Request Public Scoping Comments for the Air Tour Management Plan Program at Golden Gate National Recreation Area, San Francisco Maritime National Historical Park and Point Reyes National Seashore

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Prepare an Environmental Assessment, Notice of Public Meetings, and Notice to Request Public Scoping Comments.

The FAA, with the National Park Service (NPS) as a cooperating agency, has initiated development of Air Tour Management Plans (ATMPs) for Golden Gate National Recreation Area (GGNRA) and Point Reyes National Seashore (the Seashore). The ATMP for GGNRA will include Muir Woods National Monument and Fort Point National Historic Site, both directly managed by GGNRA, and the San Francisco Maritime National Historical Park (SF Maritime NHP), an independently managed national park unit adjacent to GGNRA.

The ATMPs are being developed pursuant to the National Parks Air Tour Management Act (*NPATMA*) of 2000 (Pub. L. 106–181) and its implementing regulations (14 Code of Federal Regulation [CFR] Part 136, Subpart B, *National Parks Air Tour Management*). Per section 40128(b)(1)(B) of *NPATMA,* the objective of an ATMP shall be to develop acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences and tribal lands within or abutting GGNRA and the Seashore. It should be noted that an ATMP has no authorization over other non-air-tour operations such as military and general aviation. In compliance with the National Environmental Policy Act of 1969 (NEPA) and FAA Order 1050.1E, an Environmental Assessment (EA) is being prepared.

The FAA has granted Interim Operating Authority (IOA) to two commercial air tour operators to conduct air tours over GGNRA, SF Maritime NHP, and the Seashore. The FAA and NPS are now inviting the public, agencies, tribes, and other interested parties to provide comments, suggestions, and input on the scope of issues and range of alternatives to be addressed in the environmental process.

The FAA and NPS are also hosting public scoping meetings to inform the public and other interested parties about the ATMP program and to provide the opportunity for comments.

DATES: By this notice, the FAA is requesting comments on the scope of the EA for the individual ATMPs at GGNRA and SF Maritime NHP, and the Seashore. Comments must be submitted by September 28, 2011.

Meetings: The meetings will be held at the following location, dates, and times:

August 16, 2011: 4:30–6:30 p.m.
GGNRA Headquarters, Fort Mason Building 201, San Francisco, CA.

August 17, 2011: 4:30–6:30 p.m.
Bay Model Visitor Center, 2100 Bridgeway, Sausalito, CA.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. *Telephone:* (310) 725–3808. Street address: 15000 Aviation Boulevard, Lawndale, California 90261. Written comments on the scope of the EA should be submitted electronically via the electronic public comment form on the NPS Planning, Environment and Public Comment Web site at: *http://parkplanning.nps.gov/BayArea_ATMP,* provided in writing at one of the public meetings/open houses, or sent to the mailing address above.

SUPPLEMENTARY INFORMATION: A public scoping packet that describes the project in greater detail is available at:

- *http://parkplanning.nps.gov/BayArea_ATMP.*
- *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/.*

Notice Regarding FOIA: Individuals may request that their name and/or address be withheld from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comment. Commentators using the Web site can make such a request by checking the box ''keep my contact information private.'' Such requests will be honored to the extent allowable by law, but you should be aware that pursuant to the Freedom of Information Act, your name and address may be disclosed. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Issued in Hawthorne, CA on July 21, 2011.

Larry Tonish,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2011–19050 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–0109]

Petition for Waiver and Other Relief

ACTION: Notice of a petition for waiver and solicitation of comments on grant of petition with conditions.

SUMMARY: On May 23, 2011, Delta Air Lines, Inc. (Delta) and US Airways, Inc. (US Airways) (together, the Joint Applicants or the carriers) submitted a joint request for the Department of Transportation (the Department) to waive a prohibition on purchasing operating authorizations (slots) at LaGuardia Airport (LGA). The carriers requested the waiver to allow them to consummate a transaction in which US Airways would transfer to Delta 132 slot pairs (265 slots) at LGA. In exchange, Delta would transfer to US Airways 42 slot pairs (84 slots) at Ronald Reagan Washington National Airport (DCA), convey route authority to operate certain flights to Sao Paulo, Brazil, and make a cash payment to US Airways.

The Department (the Office of the Secretary and the Federal Aviation Administration, or FAA) has evaluated the proposed transaction and tentatively determined that it affords significant benefits to the public. At the same time, we recognize that the transaction will result in an increase in market concentration that could negatively impact consumers. As a result, we have tentatively determined that the divestiture of a number of slots by the carriers is necessary for us to allow the transaction to proceed. We have tentatively concluded that the divestiture of 32 slots at LGA and 16 slots at DCA will reduce adverse impacts on consumers at DCA and LGA to a degree sufficient for us to conclude that the requested waiver is in the public interest. This Notice prescribes rules and procedures for the divestiture of those slots by the carriers to new entrant and limited incumbent carriers.

DATES: Comments on the FAA's proposed grant of the petition for waiver with conditions must clearly identify the docket number and must be received on or before August 29, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0109 using any of the following methods:

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, Assistant Chief Counsel for Regulations, by telephone at (202) 267–3073 or by electronic mail at *Rebecca.macpherson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

The FAA limits the number of scheduled and unscheduled operations during peak hours at LGA pursuant to an Order that was originally published in December 2006 and that has been extended several times since (the Order).[1] The Order allocates operating authorizations (commonly known as ''slots'') to carriers and establishes rules for the use and operation of slots. The Order allows temporary leases and trades of slots between carriers, provided that they do not extend beyond the duration of the Order.[2] Most importantly for purposes of this waiver request, the Order does not permit the purchase and sale of slots at LGA. The only way for a carrier to sell or purchase a slot at LGA is through a waiver of the Order.

A different legal regime governing slots exists at DCA. The High Density Rule (HDR) [3] limits scheduled and unscheduled operations there. The HDR permits carriers to sell or purchase slots at DCA with FAA confirmation of the transaction.

On May 23, 2011, Delta and US Airways submitted a joint request for a limited waiver from the prohibition on purchasing slots at LGA. The carriers requested the waiver to allow them to consummate a transaction in which US Airways would transfer to Delta 132 slot pairs (265 slots) at LGA, and Delta would transfer to US Airways 42 pairs (84 slots) at DCA, together with route authority to operate certain flights to Sao Paulo, Brazil, and make a cash payment to US Airways. The proposed transaction is described in more detail below.

We tentatively conclude that a waiver of the Order is warranted because the potential benefits of the proposed transaction, as modified by the conditions discussed below, outweigh its potential harms.

Standard of Review; Legal Authority

Because the proposed transaction involves the purchase of slots at LGA, we must determine whether a limited waiver of the Order is warranted. The FAA Administrator may grant an exemption from a rule (or an order) only ''when the Administrator decides the exemption is in the public interest.'' 49 U.S.C. 40109(b). The Administrator is also authorized to ''modify or revoke an assignment [of the use of airspace] when required in the public interest.'' 49 U.S.C. 40103(b)(1). Our determinations on requests for waivers or exemptions are based on our ''public interest'' findings. 75 FR 7,307 and 75 FR 26,325. Accordingly, in reviewing the carriers' petition for a waiver, we will consider the impacts of the overall transaction as part of our ''public interest'' analysis and determination.

The term ''public interest'' encompasses, at a minimum, the policy objectives listed by Congress in Section 40101 of Title 49 U.S. Code. Among other things, these include maximizing reliance on competitive market forces, avoiding unreasonable industry concentration and excessive market domination, and encouraging entry into air transportation markets by new carriers. 49 U.S.C. 40101(a)(4), (6), (9), (10), (12)–(13) and (d). These objectives are not exclusive; they are factors to be considered (''among others'') by the Secretary in carrying out his responsibilities and authorities. Moreover, these objectives are included in the policies embodied in the Airline Deregulation Act of 1978, Public Law No. 95–504 (92 Stat. 1705). The Administrator may take these factors—including the fostering of competition—into account when making his public interest determination.

In the context of our public interest analysis, we will balance the economic benefits of the transaction against any potential resulting adverse economic consequences. Our standard does not require that we determine that a transaction threatens no economic impairment, but rather that any resulting adverse consequences are outweighed, in our judgment, by the transaction's promised benefits.

In granting a waiver or exemption, we may impose conditions to achieve our public interest objectives.[4] Congress gave the FAA Administrator broad powers to fashion orders to carry out aviation programs. The Administrator's

[1] Operating Limitations at New York LaGuardia Airport, 71 FR 77,854 (Dec. 27, 2006); 72 FR 63,224 (Nov. 8, 2007) (transfer, minimum usage, and withdrawal amendments); 72 FR 48,428 (Aug. 19, 2008) (reducing the reservations available for unscheduled operations); 74 FR 845 (Jan 8. 2009) (extending the expiration date through Oct. 24, 2009); 74 FR 2,646 (Jan. 15, 2009) (reducing the peak-hour cap on scheduled operations to 71); 74 FR 51,653 (Oct. 7, 2009) (extending the expiration date through Oct. 29, 2011); 76 FR 18,616 (Apr. 4, 2011) (extending the expiration date until the effective date of the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport but not later than Oct. 26, 2013).

[2] The Order presently expires upon the effective date of the final Congestion Management Rule at LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport, but not later than October 26, 2013.

[3] 14 CFR part 93, subparts K and S.

[4] *See, e.g., South Dakota v. Dole,* 483 U.S. 203, 208 (1987).

general authority empowers him to ''take action [the Administrator] considers necessary to carry out this part [49 U.S.C. chapters 401–501], including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.'' 49 U.S.C. 40113(a). In furtherance of this authority, Congress expressly allowed the Administrator to ''amend, modify, or suspend an order'' and to do so ''in the way * * * the Administrator decides.'' 49 U.S.C. 46105(a). Accordingly, the Administrator may impose conditions on grants of waivers or exemptions. Additionally, the Secretary of Transportation may require conditions—such as divestitures of slots and/or other assets, including route authority—on the approval of certain transactions between airlines.

The FAA has regularly relied on pro-competitive policy goals in carrying out its slot programs.[5] The FAA consistently has considered the pro-competitive features of the Airline Deregulation Act in exercising its slot allocation authority. Conditioning the grant of the petition upon divestitures of slots in order to alleviate significant airline market concentration (at DCA for US Airways and at LGA for Delta) and dominance is consistent with past FAA policies.

2009 Transaction and Waiver Request

This petition for waiver and other relief follows a prior waiver request by the same carriers. On August 24, 2009, US Airways and Delta requested a waiver of the Order to allow a similar transaction to proceed.[6] As in this case, in the 2009 transaction, Delta and US Airways proposed to transfer a substantial proportion of their respective slot holdings at DCA and LGA to the other carrier. In 2009, Delta proposed to transfer 84 slots at DCA to US Airways, in exchange for which US Airways proposed to transfer 250 slots at LGA to Delta, as well as an option to acquire an additional 30 slots in 2015. As in the current proposed transaction, the 2009 proposal involved other, non-slot considerations—including a transfer to US Airways of certain international route authorities as well as gate, ticketing, and operations facilities at LGA's Terminal C.

The Department carefully evaluated the carriers' 2009 petition and responded on February 18, 2010.[7] In our initial response, we related the carriers' assertion that the transaction would facilitate Delta's establishment of a domestic hub at LGA and US Airways' enhancement of its network at DCA; produce more efficiencies at LGA (including Delta's plans to upgauge from US Airways' turboprops to jet aircraft; [8] provide new and enhanced service to small communities; and benefit consumers through enhanced network connectivity. Despite the transaction's asserted benefits, we did not believe that the 2009 transaction should go forward unless the carriers made more slots available for new entrants. Without a divestiture of slots by the carriers at both airports, we found that the transaction could generate adverse economic consequences—particularly due to the resulting decrease in competition between Delta and US Airways and the barriers to entry that limited the penetration of low cost competition at the two airports.

Balancing the benefits of the proposed transaction against its potential adverse impact on competition, we proposed to approve the transaction subject to the condition that the carriers dispose of 20 slot pairs (40 slots) at LGA and 14 pairs (28 slots) at DCA. We proposed that the slots be transferred to carriers whose access to DCA and LGA was otherwise limited. We established a procedure that would allow eligible carriers to compete to purchase the slots being sold by US Airways and Delta and permit the carriers to retain the cash proceeds of the disposition.

We published our February 2010 notice for public comment. We received extensive comments from Delta, US Airways, other carriers, air carrier labor unions, airport authorities, public officials, and members of the public. After reviewing those comments, we published our final notice regarding the prior transaction on May 11, 2010 (May 2010 Notice).[9]

In our May 2010 Notice, we granted the waiver request, subject to a number of conditions, as set forth in our initial notice from February of that year. Principally, we found that the public interest required that the carriers divest themselves of 20 slot pairs (40 slots) at LGA and 14 pairs (28 slots) at DCA. Moreover, we laid out a basic set of requirements that should characterize any effective remedy involving a disposition of slots at the two airports. We said that an effective remedy must: (1) Provide a sufficient number of slots to allow other carriers to mount an effective competitive response; (2) define the pool of eligible carriers to include those with the greatest economic incentive to use the slots as intensively as possible and exert competitive discipline; (3) ensure that the bundles of divested slots are suitable for a commercially viable service pattern and structured proportionate to the slots that are part of the slot swap; and (4) not cede slot distribution decisions to the parties themselves, who would minimize the competitive impact on themselves and thereby reduce consumer benefits. Our proposed order today follows these same principles.

Delta and US Airways did not choose to go forward with the transaction subject to our proposed conditions. Instead, in a July 2, 2010 filing, the carriers notified the Department of their intention to appeal our decision to the DC Circuit Court of Appeals. They later did so.[10]

2011 Transaction; Changed Economic and Industry Conditions

The transaction as now proposed by the carriers is structurally similar to the transaction proposed in 2009. Under the transaction, Delta would acquire 132 slot pairs (265 slots) at LGA from US Airways and US Airways would acquire 42 slot pairs (84 slots) at DCA from Delta and the rights to operate additional daily service to Sao Paulo, Brazil in 2015. Delta would also make a cash payment of $65 million to US Airways.

In their waiver petition, the carriers have presented the Department with an analysis of the transaction's benefits. As outlined below, many of the benefits they assert will accrue from the transaction are the same as those that

[5] The FAA implemented a ''reverse lottery'' to reallocate slots to new entrants and limited incumbents, just after enacting the Buy-Sell Rule. 51 FR 8,632 (Mar. 12, 1986). In 1992, the FAA amended the Buy-Sell Rule to expand protections afforded new entrant and limited incumbent carriers. 57 FR 37,308 at 37,309 (Aug. 18, 1992); in 2000, in the context of phasing out the HDR at LGA, the FAA specifically identified new entrant and limited incumbent carriers to be eligible for a lottery for certain slot exemptions. 65 FR 75,765 (Dec. 4, 2000). The FAA, in the past O'Hare Congestion and Delay Reduction Rule, granted preferential treatment to new entrant and limited incumbent airlines in assigning new or withdrawn slots interests. 14 CFR part 93, subpart B; 71 FR 51,400 (Aug. 29, 2006).

[6] The 2009 waiver request, our proposed response, all comments on our response, and our final order with respect to that waiver request are available in Regulations.gov, Docket FAA–2010–0109.

[7] Notice of a Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia, 75 FR 7306 (Feb. 18, 2010).

[8] Such upgauging could result in a significant increase in passenger throughput without increasing congestion and delay.

[9] Notice on Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, 75 FR 26,322 (May 11, 2010).

[10] Delta Air Lines, Inc. and US Airways, Inc. v. Federal Aviation Administration and U.S. Department of Transportation, Case #10–1153 (DC Cir. filed Jul. 2, 2010).

we analyzed in 2009 and 2010. The carriers have also claimed that changes in the economy and structure of the aviation industry at DCA and LGA, since 2010, dramatically reduce the economic harms that we viewed as potential adverse consequences of the transaction.

The carriers assert that the transaction will benefit consumers. At LGA, they claim, it will enable Delta to create a new domestic hub by consolidating its operations into an expanded main terminal facility, increasing its LGA destinations, shifting short-haul service from John F. Kennedy International Airport (JFK) to LGA, and improving connectivity there. Delta states that it would add nonstop service and replace US Airways' turboprop operations at LGA with larger aircraft, which it argues would significantly expand output and increase efficiency. At DCA, the carriers assert, the transaction would enable US Airways to commence daily nonstop service to at least 15 new destinations, improve connectivity, and utilize larger aircraft. Additionally, the transaction would relieve US Airways of its unprofitable flying obligations at LGA and allow it to transfer its LGA facilities to Delta, resulting in a more efficient use of the terminal facilities at LGA.

The carriers also highlight the fact that, since the time of our review of their last proposed transaction, low-cost carriers (LCC) have significantly increased their market penetration at both DCA and LGA. The carriers state that JetBlue, AirTran, and Frontier have increased the number of LCC slots at DCA by 46, thereby increasing the LCC slot share percentage at that airport. They maintain that these holdings increase the slot share of LCCs from 3.3% to 8.6% at DCA, exceeding the 6.5% LCC slot share that would have obtained under the divestiture terms of our May 2010 Notice. At LGA, the carriers point out that Frontier, AirTran, and Southwest recently acquired slots, for a net increase of 18 LCC slots. They maintain that these holdings increase the slot share of LCCs from 6.8% to 8.5% at LGA, closer to the 10.3% LCC slot share sought in our May 2010 Notice. The carriers assert that an economic analysis demonstrates that the proposed remedy, coupled with the increased number of LCC slot holdings, would exceed the competitive effects of the Department's May 2010 proposed divestitures of 20 LGA slot pairs and 14 DCA slot pairs. They say that the Southwest/AirTran merger will intensify competition in the Washington, DC, and New York City areas.

Furthermore, the carriers assert, the United/Continental merger, consummated on September 30, 2010, enhanced United's competitive profile at both Newark Liberty International Airport (EWR) and Washington Dulles International Airport, as well as at LGA and DCA. Moreover, Delta states that this transaction would enable it to establish a domestic hub at LGA, secure corporate accounts, shift short-haul JFK service to international service, and thereby address the competitive advantage secured by American Airlines/British Airways through their antitrust immunity alliance.

Summary of Proposed Findings and Conditions

As described in more detail below, we tentatively find that the proposed transaction, like the prior 2009 transaction, offers important benefits to the public.[11] At the same time, as before, we believe that the proposed transaction could have an adverse impact on competition, because of the reduction in competition between the two carriers and their increased market share at the two airports, among other things. In evaluating the public interest in this transaction, we have carefully weighed and balanced the benefits and possible adverse consequences of the transaction. While we remain concerned about those possible consequences, as laid out in our 2010 notices, we believe the transaction's promised benefits for the public—particularly in light of the increased penetration of low cost carriers at the airports since the time of our last review—are sufficient for us to conclude that the requested waiver is in the public interest. Accordingly, we have tentatively found that the transaction should be approved, subject to the conditions set forth below, including requirements that the carriers dispose of 16 pairs (32 slots) at LGA and 8 pairs (16 slots) at DCA pursuant to the sale mechanisms described in detail below and that they transfer the 265 LGA slots and 84 DCA slots in two phases so as to attenuate the impacts of their new operations on their smaller-sized competitors at the airports.

We note that the Department is evaluating this transaction under its statutory authority alone. As described above, we are required to determine whether or not, on balance, waiving the terms of the LGA Order to allow the proposed transaction to proceed is in the public interest. Our standard of review in this transaction is substantively different from that of the Department of Justice, which acts under a different statutory and regulatory framework. Our tentative conclusions presented here are not binding on the Department of Justice, which must evaluate the transaction under its own statutory authority.

Discussion

Developments at DCA

Since the Department last evaluated carrier slot holdings in connection with the issuance of the May 2010 Notice, various service changes have occurred at DCA, some of which involved an expansion of service by low-cost carriers.

- Low-cost carrier AirTran, which held 16 slots and slot exemptions at DCA at the time of our earlier analysis, received 6 slots from Continental as part of an exchange for operating authorizations at EWR. The transfer was designated as temporary in nature, to expire October 29, 2011, and Continental remains the slot holder of record. It added a pair of off-peak slots allocated by the FAA[12] and now operates a total of 24 weekday slots from DCA. AirTran utilized the additional slots from Continental to add frequencies to its Atlanta and Orlando services.
- On March 31, 2010, JetBlue and American Airlines announced an agreement for commercial collaboration that involved, *inter alia,* a transfer of 16 slots at DCA from American to JetBlue. The transfer was designated as temporary in nature, to expire October 29, 2011, and American remains the slot holder of record.[13] JetBlue also was allocated one slot each in the 0600 and 2200 hour periods by FAA (which periods are not fully subscribed and so still available to new entry). Beginning November 1, 2010, JetBlue initiated service from DCA with these slots, with seven daily nonstops to Boston Logan International Airport (BOS) and one daily nonstop each to Fort Lauderdale-Hollywood International Airport (FLL) and Orlando International Airport (MCO).[14] JetBlue's new service

[11] Additionally, the FAA finds that the grant of the waiver would not adversely affect safety. 14 CFR part 11.

[12] AirTran also received two slots from the FAA for Saturday only operations.

[13] The arrangement also included a transfer, by JetBlue to American, of 24 slots at JFK. The FAA limits the number of scheduled operations at JFK and, under an Order, permits only leases, trades or transfers through the duration of the Order. *See* 76 FR 18,620, extending the duration of the Order from October 29, 2011 to the effective date of a final congestion management rule at the three New York City airports (JFK, LGA, and Newark Liberty International Airport), or October 26, 2013.

[14] The May 2010 Notice noted the pending American-JetBlue agreement, stating that, if

Continued

competes primarily against US Airways and Delta on the DCA–BOS and DCA–MCO routes, and against US Airways and Spirit on the DCA–FLL route.

• Another transaction affecting LCC presence at DCA came in the wake of the 2009 acquisition of both Midwest Airlines and LCC Frontier Airlines by Republic Airways Holdings Inc. Subsequent to the Final Notice, Republic assigned 16 of Midwest's 18 slots to operations marketed by Frontier (although Republic remains the holder of record of the slots).[15] Frontier utilizes these slots to provide service from DCA to Milwaukee, Kansas City, and Omaha.[16] The other two, which were slot exemptions, were reallocated to LCC Sun Country Airlines by DOT, where they are used to provide service to Lansing, MI.[17]

• In another development at DCA, on September 27, 2010, Southwest Airlines and AirTran Airways announced their intention to merge their operations through Southwest's acquisition of AirTran in a stock and cash transaction. As noted above, at the time the Department was analyzing the prior application, AirTran held and operated 16 slots and slot exemptions at DCA, which it used to provide service to Atlanta, Orlando, Milwaukee, and Ft. Myers, FL. Southwest is an LCC that has grown dramatically since 1990 to become the largest U.S. domestic carrier when measured by DOT Form 41 segment transported passengers. The acquisition of AirTran will bring to DCA Southwest's brand recognition, passenger loyalty, and access to its route network, which together should have a strong positive and tangible effect on overall competition at DCA. Although entry into AirTran's Atlanta hub appears to be Southwest's main objective in pursuing the deal, the acquisition also expands Southwest's network in one consolidated move, adding a number of additional unconnected city pair markets into which it could expand its presence. The combined carrier therefore provides an expanded LCC capability at DCA to provide passengers with additional travel opportunities on new online routes through a larger overall network.

• The Joint Applicants also argue that the merger between United and Continental, as well as the immunized American Airlines/British Airways alliance, will intensify competition.[18] Considering first the UA/CO merger and its impacts at DCA, it should be noted that the merged carrier has only a 5% share of Origin & Destination (''O&D'') passengers at that airport, which, with a legacy cost structure, gives it limited ability to seriously impact competition there.[19] Moreover, while there is limited data from which to reach conclusions at this point, our review of departures and average seats at DCA since the UA/CO merger shows a decline in the carrier's overall departures, while its yields dropped very slightly between 2009 and 2010. We do not see from these indicators that the merger has been as relevant to the slot swap competition issues before us as the other developments noted above. Similarly, we do not see the AA/BA alliance as significantly impacting competition at DCA, which of course is essentially domestic in character. As shown in Table 3, American's share of departures at DCA declined from 15.2% to 12.2% percent from first quarter 2010 to first quarter 2011, and its seats from 15.5% to 13.9%, figures that do not suggest increasing competitiveness.

Developments at LGA

As at DCA, various service changes have recently occurred at LGA, some of which involved an expansion of service by low-cost carriers. However, these changes were not as significant as those at DCA.

• Late in 2009, AirTran Airways began offering LGA–Indianapolis and increased LGA–Orlando flights with 4 LGA slots it acquired from Continental, although it now only operates LGA–MCO on Saturdays and Sundays. This acquisition was another part of the agreement, also noted above, by which it transferred to Continental 13 slots at EWR, as well as its lone gate at that airport. The Indianapolis and Orlando flights compete with offerings from Delta; JetBlue also has LGA–MCO flights.

• The Compass Lexicon study, attached to the Petition for Waiver as Appendix A, notes that ''Southwest acquired one slot from the FAA.'' [20] They appear to be referring to the allocation by FAA, in mid-2009, of one 0600 LGA departure slot, which increased Southwest's operating authorizations there from 14 to 15. Southwest had acquired the original 14 slots at LGA in its acquisition of ATA Airlines, and with the 0600 departure and an arrival in the 2200 hour that does not require a slot, it is able to offer a total of 8 roundtrips from LGA. Southwest utilizes these slots to provide service to Midway and BWI airports.

• As part of an arrangement already described above, in November 2009 Republic Airways acquired Midwest and began operating Midwest's slots. In 2010, Frontier, another Republic Airways Holdings LCC, began operating 13 slots at LGA that had formerly been operated by Midwest. With these 13 slots, Frontier markets flights to Milwaukee and Kansas City. We have confirmed that Midwest passenger traffic declined in those markets and that Frontier traffic correspondingly increased during the fourth quarter of 2010, and that Frontier has marketed those flights at average yields that are consistent with LCC operations. Accordingly, the 13 slots reassigned to Frontier are being treated by the Department as slots flown by LCCs.

• The Southwest-AirTran merger should also, as the joint applicants claim, intensify competition at LGA. Prior to the merger, AirTran had a 5.7% LGA seat share and Southwest a 2.6% share. As at DCA, the merger will bring to LGA Southwest's brand recognition, passenger loyalty, and access to its route network, which together should have a positive and tangible effect on overall competition at the airport. Also, if Southwest chooses to upgauge to its B–737s in some markets, it can increase seat capacity per flight by 15 seats over AirTran's average aircraft seating.

• As noted above, the Joint Applicants claimed that the UA/CO merger and the immunized AA/BA alliance will strengthen competition at New York as well as in Washington. Again, there is not much yield data available to support this contention, and whatever impacts there are in New York will be felt more at EWR and JFK than at LGA. A review of American, United,

implemented, LCC's would increase their interests to 5.2% of the DCA slots. 62 FR at 26,323. We also noted that the transaction did not affect the concentration level of US Airways at DCA, as the slots were being transferred to JetBlue not by US Airways but by American, which would be its nearest rival at the airport if the transaction were approved. 75 FR at 26,336.

[15] It should also be noted that, on June 13, 2011, it was reported that Republic was seeking to shrink its holdings in Frontier Airlines to a minority stake by the end of 2014, based on a tentative agreement with Frontier pilots. Associated Press, *Republic Airways Seeking New Investors for Frontier, Aims for Minority Stake by End of 2014, Washington Post,* June 13, 2011.

[16] Through analysis of 2010 DOT Form 41 Origin and Destination Data, we have confirmed that Midwest passenger traffic declined and that Frontier traffic correspondingly increased in these markets reflecting this reassignment from Midwest/Republic to Frontier. Moreover, we have confirmed that Frontier has marketed these flights at average yields that are consistent with LCC operations. Accordingly, the 16 slots reassigned to Frontier have been recorded by the Department as slots flown by LCCs.

[17] DOT Order 2010–12–16 (December 10, 2010).

[18] Petition for Waiver and Other Relief, May 23, 2011 at 13.

[19] DOT Form 41 Origin and Destination Survey data.

[20] Petition for Waiver and Other Relief, May 23, 2011, Appendix A at 10.

and Delta departures at LGA indicate that over the last two years it is Delta that has most expanded departures at LGA, while American's departures have risen to a much lesser degree and United's have remained essentially the same. As above, we do not see from these indicators that these developments have been as relevant to the slot swap competition issues at LGA before us as the other factors noted above.

The tables below capture the changed circumstances described above, by depicting ''original'' and ''current'' competitive positions in both slots and number of departures, seats, and passengers for the carriers serving DCA and LGA: [21]

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[21] Republic Airways Holdings holds 113 total slots at DCA, as the result of a sale/licensing transaction with US Airways. Its subsidiaries largely operate from these slots under pay-for-service arrangements with US Airways. All 113 are commuter slots, rather than air carrier slots. Republic's operations from these are included within US Airways' results in the tables for DCA.

Table 1

DCA Slots -- Previous and Current

	Slots "Original" 1/	Share	Slots 4/1/2011	Share
AIR CANADA	16	1.9%	16	1.9%
AIRTRAN AIRWAYS 2/	16	1.9%	24	2.8%
ALASKA AIRLINES	6	0.7%	6	0.7%
AMERICAN AIRLINES	121	14.5%	105	12.3%
UNITED/ CONTINENTAL AIRLINES	83	10.0%	76	8.9%
DELTA AIR LINES 3/	193	23.2%	200	23.5%
FRONTIER AIRLINES 4/	6	0.7%	22	2.6%
JETBLUE AIRWAYS CORP. 5/	0	0.0%	18	2.1%
MIDWEST AIRLINES	18	2.2%	0	0.0%
REPUBLIC AIRWAYS HOLDINGS, INC. 6/	113	13.6%	113	13.3%
SPIRIT AIRLINES	6	0.7%	6	0.7%
SUN COUNTRY AIRLINES, INC.	0	0.0%	2	0.2%
US AIRWAYS 7/	254	30.5%	263	30.9%
Total	832	100%	851	100.0%

	Slots		Slots	
US Airways 8/	367	44.1%	376	44.2%
Delta	193	23.2%	200	23.5%
LCC Share 9/	28	3.3%	72	8.5%

1/ Distribution of slots as considered in the Department's May 2010 Notice.
2/ Continental traded six slots to AirTran; AirTran operates the slots but CO remains the holder
3/ The increase from "Original" to 4/1/2011 is due to Delta acquiring additional off-peak slots from the FAA
4/ After acquisition of Midwest by Republic, 16 of Midwest's 18 slots were reassigned to Frontier and 2 were reallocated to Sun Country
5/ American traded 16 slots to JetBlue; JetBlue operates the slots but AA remains the holder
6/ Republic holds 113 commuter slots but operates them under agreement with US Airways
7/ The increase from "Original" to 4/1/2011 is due to US Airways acquiring off-peak slots from the FAA
8/ Includes 113 commuter slots held by Republic Airways Holdings
9/ AirTran, Frontier, JetBlue, Spirit, Sun Country
Source: Typical weekday (Thursday), FAA Holder Report status date 4/1/2011

Table 2

LGA Slots -- Previous and Current

	Slots "Original" 1/	Share	Slots 4/1/2011	Share
AIRTRAN AIRWAYS 2/	22	1.9%	23	2.0%
AMERICAN AIRLINES	236	20.6%	236	20.6%
AIR CANADA	43	3.7%	43	3.8%
UNITED/CONTINENTAL AIRLINES	94	8.2%	94	8.2%
DELTA AIR LINES	278	24.2%	278	24.3%
FRONTIER AIRLINES 3/	5	0.4%	19	1.7%
JETBLUE AIRWAYS CORP.	15	1.3%	15	1.3%
MIDWEST AIRLINES	18	1.6%	0	0.0%
SPIRIT AIRLINES	22	1.9%	22	1.9%
SOUTHWEST AIRLINES 4/	15	1.3%	15	1.3%
US AIRWAYS	399	34.8%	399	34.9%
Total	1147	100%	1144	100%
Delta	278	24.2%	278	24.3%
US Airways	399	34.8%	399	34.9%
LCC Shares 5/	79	6.9%	94	8.2%

1/ Distribution of slots as considered in the Department's May 2010 Notice.
2/ Continental traded four slots to AirTran; AirTran operates the slots but CO remains the holder
3/ After Midwest's acquisition by Republic, Republic reassigned 15 of its slots to Frontier
4/ Southwest and AirTran are merging their operations
5/ Frontier, JetBlue, AirTran, Spirit, Southwest
Source: Typical weekday (Thursday), FAA Holder Report status date 4/1/2011

Table 3

Reagan Washington National Airport
T-100 Segment First Quarter 2010 vs. 2011

	DCA Departures		DCA Seats		DCA PAX	
Air Carriers	2010	2011	2010	2011	2010	2011
Air Canada	0.9%	0.9%	0.7%	0.7%	0.7%	0.6%
Air Canada Regional	1.3%	1.4%	0.7%	0.7%	0.6%	0.5%
Air Wisconsin Airlines Corp	10.9%	8.9%	5.9%	4.7%	5.3%	4.2%
AirTran Airways Corporation	3.0%	3.0%	4.0%	3.8%	4.2%	4.0%
Alaska Airlines Inc.	0.8%	0.8%	1.4%	1.3%	1.6%	1.8%
American Airlines Inc.	7.5%	7.4%	11.7%	11.6%	12.8%	13.0%
American Eagle Airlines Inc.	7.7%	4.7%	3.8%	2.3%	3.8%	2.3%
Atlantic Southeast Airlines	0.0%	3.7%	0.0%	2.5%	0.0%	1.9%
Chautauqua Airlines Inc.	3.7%	3.2%	2.0%	1.7%	1.9%	1.5%
Colgan Air	1.4%	0.9%	0.8%	0.4%	0.6%	0.3%
Comair Inc.	5.5%	3.4%	3.2%	2.0%	2.7%	1.7%
Compass Airlines	0.5%	0.4%	0.4%	0.3%	0.5%	0.3%
United/Continental Air Lines Inc.	5.8%	4.9%	8.5%	7.0%	9.3%	7.2%
Delta Air Lines Inc.	7.8%	9.4%	11.4%	14.0%	12.4%	14.6%
ExpressJet Airlines Inc.	1.5%	2.0%	0.8%	1.0%	0.6%	0.8%
Frontier Airlines Inc.	0.8%	1.2%	1.5%	1.8%	1.8%	2.2%
JetBlue Airways	0.0%	2.2%	0.0%	2.3%	0.0%	2.4%
Mesaba Airlines	0.4%	0.8%	0.3%	0.6%	0.4%	0.6%
Piedmont Airlines	0.1%	0.5%	0.0%	0.2%	0.0%	0.2%
Pinnacle Airlines Inc.	0.2%	1.7%	0.1%	0.9%	0.1%	0.8%
PSA Airlines Inc.	4.1%	4.5%	2.2%	2.3%	2.0%	2.2%
Republic Airlines	14.7%	13.5%	12.8%	11.7%	12.2%	11.4%
Shuttle America Corp.	3.3%	3.5%	2.7%	2.8%	1.3%	1.4%
SkyWest Airlines Inc.	0.0%	0.1%	0.0%	0.1%	0.0%	0.1%
Spirit Air Lines	0.8%	0.7%	1.3%	1.3%	1.6%	1.6%
US Airways Inc.	17.0%	16.3%	23.7%	21.9%	23.6%	22.6%
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
By Marketing Carrier						
US Airways Inc.	51.2%	47.3%	47.0%	42.7%	45.2%	42.0%
American Airlines Inc.	15.2%	12.2%	15.5%	13.9%	16.6%	15.2%
United Air Lines Inc.	8.6%	8.0%	10.2%	8.8%	10.5%	8.5%
Delta Air Lines Inc.	17.2%	22.4%	17.7%	22.8%	17.3%	21.1%
Air Canada	2.2%	2.3%	1.4%	1.4%	1.2%	1.2%
Alaska Airlines Inc.	0.8%	0.8%	1.4%	1.3%	1.6%	1.8%
LCC	4.7%	7.1%	6.8%	9.2%	7.6%	10.3%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Note: The Marketing Carrier data includes their affiliated carriers; where operating carriers operate on behalf of multiple marketing carriers their data are apportioned as shown.

US Airways= Piedmont; PSA; Chautauqua 89%; Colgan 73%; Republic; Air Wisconsin

American and American Eagle

United= Continental; ExpressJet; Skywest; Chautauqua 11%; Colgan 27%; Shuttle America 14%

Delta= Atlantic Southeast; Mesaba; Pinnacle; Shuttle America 86%; Comair

Air Canada and Air Canada Regional

LCC= AirTran; Frontier; JetBlue; Spirit

Table 4

New York LaGuardia Airport
T-100 Segment First Quarter 2010 vs. 2011

	LGA Departures		LGA Seats		LGA Pax	
Air Carriers	2010	2011	2010	2011	2010	2011
Air Canada	3.0%	3.0%	2.8%	2.7%	2.6%	2.6%
Air Canada Regional	0.7%	0.8%	0.4%	0.5%	0.3%	0.4%
Air Wisconsin Airlines Corp	9.3%	8.3%	5.1%	4.4%	4.4%	4.1%
AirTran Airways Corporation	3.8%	3.5%	5.1%	4.5%	5.0%	4.8%
American Airlines Inc.	9.2%	8.9%	15.1%	14.2%	17.4%	15.7%
American Eagle Airlines Inc.	9.5%	11.2%	4.1%	6.3%	3.6%	5.0%
Atlantic Southeast Airlines	0.4%	0.5%	0.2%	0.3%	0.2%	0.3%
Chautauqua Airlines Inc.	6.9%	4.7%	3.8%	2.5%	3.5%	2.3%
Comair Inc.	3.3%	4.4%	2.4%	3.2%	2.3%	2.9%
Compass Airlines	0.0%	0.6%	0.0%	0.5%	0.0%	0.4%
United/Continental Airlines Inc.	4.4%	5.2%	6.7%	7.7%	7.7%	8.9%
Delta Air Lines Inc.	14.0%	13.8%	21.6%	21.3%	21.5%	21.7%
ExpressJet Airlines Inc.	0.4%	0.4%	0.2%	0.2%	0.2%	0.3%
Frontier Airlines Inc.	0.4%	0.9%	0.7%	1.5%	0.9%	1.8%
JetBlue Airways	1.9%	1.8%	3.1%	2.9%	3.8%	3.8%
Mesa Airlines Inc.	0.6%	0.2%	0.3%	0.1%	0.4%	0.1%
Mesaba Airlines	0.5%	0.9%	0.4%	0.4%	0.3%	0.3%
Piedmont Airlines	10.3%	10.8%	4.2%	4.3%	2.9%	3.2%
Pinnacle Airlines Inc.	0.7%	0.5%	0.4%	0.3%	0.3%	0.2%
PSA Airlines Inc.	1.0%	0.7%	0.6%	0.4%	0.6%	0.4%
Republic Airlines	2.5%	1.2%	2.2%	1.1%	2.5%	1.1%
Shuttle America Corp.	6.0%	6.6%	4.9%	5.3%	3.6%	3.5%
Southwest Airlines Co.	1.6%	1.6%	2.4%	2.3%	2.6%	2.7%
Spirit Air Lines	2.3%	2.2%	4.0%	3.7%	4.7%	5.0%
Trans States Airlines	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%
US Airways Inc.	7.1%	7.2%	9.4%	9.5%	8.7%	8.3%
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
By Marketing Carrier						
US Airways Inc.	33.3%	30.8%	23.2%	21.0%	20.4%	18.4%
American Airlines Inc.	18.8%	20.1%	19.2%	20.5%	21.1%	20.7%
United Air Lines Inc.	7.4%	7.7%	8.4%	9.2%	9.4%	10.2%
Delta Air Lines Inc.	26.8%	27.6%	30.7%	31.3%	29.2%	29.5%
Air Canada	3.8%	3.8%	3.3%	3.1%	2.9%	3.1%
LCC	9.9%	10.0%	15.2%	14.9%	17.0%	18.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Note: The Marketing Carrier data includes their affiliated carriers; where operating carriers operate on behalf of multiple marketing carriers their data are apportioned as shown.

US Airways= Piedmont; PSA; Republic; TranStates; Chautauqua 37%; Mesaba 85%

American and American Eagle

United= Continental; ExpressJet; Atlantic Southeast; Mesa; Chautauqua 16%; Shuttle America 8%

Delta= Shuttle America 92%; Mesaba 15%; Pinnacle; Chautauqua 47%; Comair; Compass

Air Canada and Air Canada Regional

LCC= AirTran; Frontier; JetBlue; Spirit and Southwest

The Effects of the Proposed Swap: US Airways at DCA

If the planned transaction is approved without change (*i.e.,* the additional 16 slot divestitures offered by the carriers are not required as a condition for approval), US Airways' slots at DCA would increase from the 254 held at the time of the Department's earlier analysis to 347. An additional 113 slots are held by Republic Airways Holdings under a financing deal with US Airways and operated by it for US Airways on a fee-for service basis. US Airways states that with the new slots at DCA it will provide service to at least 15 destinations it currently does not serve, some of which currently have no nonstop service from that airport.[22] It also plans to increase the number of seats offered at DCA by filling the new capacity with larger regional jets and mainline jets, claiming that it can gain over 1 million new seats without adding to congestion at the airport. Delta states that with the slots it retains it will continue to serve its seven hubs,[23] maintain its shuttle service to LGA, and continue service on its AIR–21 slot exemption routes.[24]

US Airways would increase its dominance at DCA in terms of slot holdings with the addition of the 84 slots. Table 5 below shows comparative slot interests of the carriers serving DCA, were DOT to grant the petition without requiring any additional divestitures. In this scenario, the slot holdings of US Airways would increase to 40.8% (54.1% if those held by Republic Airways Holdings but operated for US Airways are included), while those held by Delta (plus commuter affiliates) would decline to 13.6% and those held by LCCs would stay at 8.5%.

[22] In a 2009 press release addressing the intended new service under the previous petition, US Airways identified 15 new destinations as Cincinnati, Des Moines, Grand Rapids, Madison (WI), Montreal, Miami, and Ottawa (all of which then had daily nonstop service from DCA), and Birmingham (AL), Islip (NY), Ithaca (NY), Little Rock, Myrtle Beach (SC), Pensacola, Savannah, and Tallahassee (all of which at that time had no daily nonstop service from DCA). ''US Airways announces slot transaction with Delta Air Lines,'' August 12, 2009. The present petition reiterates the commitment to serve at least 15 new destinations, but does not specify whether those will be the same as the ones identified in 2009.

[23] Delta's seven hubs are New York/JFK, Atlanta, Memphis, Detroit, Minneapolis/St Paul, Cincinnati, and Salt Lake City.

[24] Delta states it would serve its ''AIR–21 routes.'' Delta was awarded 2 slot exemptions under AIR–21 for service to Salt Lake City; in addition, however, Atlantic Southeast flies as Delta Connection to Jackson, MS, with 2 DCA slot exemptions awarded under AIR–21, and Comair flies as Delta Connection to Lexington, KY, with 2 Vision-100 slot exemptions.

Table 5

DCA Slots -- Previous, Current, and as Proposed

	Slots "Original" 1/	Share	Slots 4/1/2011	Share	Post Transaction	Share
AIR CANADA	16	1.9%	16	1.9%	16	1.9%
AIRTRAN AIRWAYS 2/	16	1.9%	24	2.8%	24	2.8%
ALASKA AIRLINES	6	0.7%	6	0.7%	6	0.7%
AMERICAN AIRLINES	121	14.5%	105	12.3%	105	12.3%
UNITED/CONTINENTAL AIRLINES	83	10.0%	76	8.9%	76	8.9%
DELTA AIR LINES 3/	193	23.2%	200	23.5%	116	13.6%
FRONTIER AIRLINES 4/	6	0.7%	22	2.6%	22	2.6%
JETBLUE AIRWAYS CORP. 5/	0	0.0%	18	2.1%	18	2.1%
MIDWEST AIRLINES	18	2.2%	0	0.0%	0	0.0%
REPUBLIC AIRWAYS HOLDINGS, INC. 6/	113	13.6%	113	13.3%	113	13.3%
SPIRIT AIRLINES	6	0.7%	6	0.7%	6	0.7%
SUN COUNTRY AIRLINES, INC.	0	0.0%	2	0.2%	2	0.2%
US AIRWAYS	254	30.5%	263	30.9%	347	40.8%
Total	832	100%	851	100%	851	100%

	Slots		Slots		Slots	
US Airways 7/	367	44.1%	376	44.2%	460	54.1%
Delta	193	23.2%	200	23.5%	116	13.6%
LCC Share 8/	28	3.3%	72	8.5%	72	8.5%

1/ Distribution of slots as considered in the Department's Final Notice of May 4, 2010

2/ Continental traded six slots to AirTran; AirTran operates the slots but CO remains the holder

3/ The increase from "Original" to 4/1/2011 is due to Delta acquiring additional off-peak slots from the FAA

4/ After acquisition by Republic, of Midwest's 18 slots, 16 were reassigned to Frontier and 2 were reallocated to Sun Country

5/ American traded 16 slots to JetBlue; JetBlue operates the slots but AA remains the holder

6/ Republic holds 113 commuter slots but operates them under agreement with US Airways.

7/ Includes 113 commuter slots held by Republic Airways Holdings

8/ Proposed divested slots not included

Source: Typical weekday (Thursday), FAA Holder Report status date 4/1/2011

The Effects of the Proposed Swap: Delta at LGA

Delta states that, with 265 new slots, it would almost double its nonstop destinations from LGA to more than 70 cities. Further, it would create a domestic hub at that airport, and increase the number of customers served without increasing congestion by using larger capacity aircraft than US Airways currently uses with the slots. It would achieve this through use of an all-jet fleet, replacing the turboprops that are currently utilized by US Airways. With the slot swap Delta will likely focus on expanding its domestic network out of the enhanced LGA hub and concentrate its JFK operations on international and long-haul domestic service.

Delta states that it would also offer service to many destinations that are not currently served nonstop by either Delta or US Airways. US Airways will retain its shuttle service to Boston's Logan Airport and DCA and continue flights to Charlotte, Philadelphia, and Pittsburgh. US Airways claims that its smaller aircraft operations at LGA have been unprofitable. It contends that swapping assets from there to enhance its successful operations at DCA will improve its profitability by more than $75 million.

Delta would operate a total of 18 of 20 gates in US Airways' Terminal C, and add one additional gate to its existing ten at Delta's Terminal D, for a total of 29 gates in the two terminals. Delta would then build a 600-foot connector between the two terminals so that it can operate as a single terminal from a passenger perspective. A ''significant number of construction jobs'' would be created in connection with this work. Delta will take over the current US Airways Club in Terminal C and convert it into a Sky Club to complement the existing club in Terminal D.

US Airways on the other hand, will have 6 gates once the terminal is reconfigured to add more ramp positions, plus 3 parking positions for regional jets. US Airways would continue to offer high-frequency schedules from LaGuardia to its Charlotte, NC, and Philadelphia hubs and Pittsburgh with more than 60 weekday flights. All US Airways flights from LaGuardia would continue to arrive and depart from nine gates and parking positions in Terminal C. US Airways will build a new, 5,000-square foot US Airways Club.[25] Delta and US Airways will continue to compete with Shuttle Services to Boston and DCA (Delta at its 6 gates in the Marine Air Terminal). Finally, subject to Government approvals and to other conditions, Delta will convey to US Airways, for purposes of intended US Airways flights to Brazil beginning in 2015, certain Brazilian route authorities and slots at Sao Paulo, Brazil.

Delta would accede to a dominant position in terms of slot holdings at LGA, with the addition of the 265 slots (even were the 32 slots required by the Department to be divested). Table 6 below shows comparative slot holdings of the carriers serving LGA, without any additional divestitures. As can be seen, under the proposal Delta's slot share would almost double, from 24.2% to 47.5%. American would remain second, at 20.6%. US Airways' share would decrease from 34.8% to 11.7%. The table also reflects the increase in LCC share, due to the developments noted above, from 6.9% to 8.2%.

[25] Delta, US Airways Announce New Agreement to Transfer Flying Rights in New York and Washington, DC, Delta, and US Airways Press Release, May 23, 2011.

Table 6

LGA Slots -- Previous, Current, and as Proposed

	Slots "Original" 1/	Share	Slots 4/1/2011	Share	Post-Slots Transaction	Share
AMERICAN AIRLINES	236	20.6%	236	20.6%	236	20.6%
AIR CANADA	43	3.7%	43	3.8%	43	3.8%
UNITED/CONTINENTAL AIRLINES	94	8.2%	94	8.2%	94	8.2%
DELTA AIR LINES	278	24.2%	278	24.3%	543	47.5%
FRONTIER AIRLINES 2/	5	0.4%	19	1.7%	19	1.7%
JETBLUE AIRWAYS CORP.	15	1.3%	15	1.3%	15	1.3%
MIDWEST AIRLINES	18	1.6%	0	0.0%	0	0.0%
SPIRIT AIRLINES	22	1.9%	22	1.9%	22	1.9%
SOUTHWEST AIRLINES	15	1.3%	15	1.3%	15	1.3%
AIRTRAN AIRWAYS	22	1.9%	23	2.0%	23	2.0%
US AIRWAYS	399	34.8%	399	34.9%	134	11.7%
Total	1147	100%	1144	100%	1144	100%

	Slots		Slots		Slots	
Delta	278	24.2%	278	24.3%	543	47.5%
US Airways	399	34.8%	399	34.9%	134	11.7%
LCC Shares 3/	79	6.9%	94	8.2%	94	8.2%

1/ Distribution of slots as considered in the Department's initial Final Notice.
2/ 15 Republic slots are being operated as Frontier
3/ Proposed divested slots not included
Source: Typical weekday (Thursday), FAA Holder Report status date 4/1/2011

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Description of the Claimed Benefits of the Swap

As noted above, the Joint Applicants contend that approval of the slot swap would enable both carriers to more efficiently operate at the airports and permit more passengers and destinations to be served. They argue that efficiencies will occur through upgauging of aircraft size at both LGA and DCA, thereby increasing throughput and competition while reducing congestion and delay. In addition, they contend that the facilities transfer will enable Delta to create a seamless hub at LGA and facilitate enhanced competition and preserve and enhance small community access at both LGA and DCA.

For the reasons stated below, we tentatively agree with the Joint Applicants' claimed benefits discussed below, and find that these claimed benefits likely would be realized if the transaction were implemented as remedied. Our tentative view derives in large part from concerns that some of the slots at issue in this transaction are currently being used sub-optimally and inefficiently, both from the perspective of the carriers holding them as well as from the perspective of the public interest.

Benefits at DCA:

• *Expanded US Airways Service*—With the addition of 84 slots, US Airways will be able to initiate daily nonstop service to at least 15 new destinations from DCA. Some of these routes are currently served by other carriers from other Washington area airports and some of these routes do not currently have any daily nonstop service. These destinations include several small, medium-sized, and larger communities.[26] The airline anticipates an increase of approximately 20 to 25 percent in passenger enplanements at DCA as a result of new flights and schedule improvements. This projected service would not be affected by the

[26] While Delta and US Airways have made public some of their new intended services, including service to small communities, the carriers have not released all intended service changes and are not obligated to implement or retain over the longer-term any of the proposed services in new markets.

proposed divestitures if they come from Delta's complement.

• *Improved connectivity*—US Airways contends that it will afford DCA originating passengers more nonstop destination service and provide additional connecting passenger service through an expanded network.

• *Up-gauging and up-grading service*—US Airways plans to up-gauge aircraft and offer customers more dual class service. It will use larger aircraft, including more large regional and mainline aircraft with first-class service on large regional jets, on many routes by 2012.

Benefits at LGA:

• *New domestic hub at LGA*—With the additional slots and facilities it will acquire under the proposal, Delta will establish a new domestic hub at LGA. A hub presence will allow increased connecting opportunities, improving travel options for passengers across Delta's network. It will also permit increased operations to smaller communities, which are often only able to sustain service through hub-and-spoke operations. Delta submitted a study by Compass Lexecon that asserted that Delta's expansion at LGA would produce more than 6,000 new connecting opportunities for their passengers at that airport.

• *Consolidation of LGA operations in one main terminal facility*—As noted above, Delta will link its Terminal C and Terminal D gates with a 600 foot connector. This will provide added convenience to many passengers, particularly ones with connecting flights, and allow shorter connecting times on some flights.

• *Improved Competition against US Airways at Philadelphia and United/Continental at Newark*—The carriers claim that Delta's development of a hub at LGA will create ''important'' new competition against US Airways' hub at Philadelphia and United/Continental's at Newark. Philadelphia International Airport is approximately 100 miles from LGA and constitutes a distinct market. However, the operation of a stronger hub for Delta at LGA will provide additional options for travelers in the greater New York area, and should provide some competitive counterweight to the strong UA–CO hub at Newark.

• *Delta Will Expand Service at LGA*—Delta will approximately double the number of within perimeter nonstop destinations served from LGA and shift short haul service from JFK to LGA, freeing up JFK for longer-haul flights.[27]

• *Delta Will Increase the Available Seat Capacity of New York Airports*—US Airways currently operates 39% of its flights with turboprop aircraft configured with 37 or fewer seats. Delta plans to utilize an all-jet fleet at LGA. Replacing US Airways' turbojets with larger jets will increase available capacity, estimated to equate to a 2% overall increase in New York seat capacity.

The Joint Applicants' Compass Lexecon study estimates the magnitude of capacity benefits in terms of roundtrip seat capacity increases of 2.5 million at DCA and 4.4 million at LGA.[28] The study further estimates that the consumer benefits from the increased flying generated by improved network connectivity and service at approximately $126 million annually for passengers flying to and from LGA and at approximately $27 million for passengers flying to and from DCA, for a total of approximately $153 million at both airports combined. They cite another $33 million in estimated benefits to consumers flowing from increased airport operational efficiency resulting from upgauging from turboprop aircraft to jet aircraft at LGA. In addition, the Joint Applicants argue that the facilities transfer will enable Delta to create a seamless hub at LGA and will facilitate enhanced competition and preserve and enhance small community access at both LGA and DCA. While these estimates are of course subject to customary assumptions and estimations, we do not believe they are unreasonable for the purposes here.

Perceived Costs and Risks of the Transaction

Although there are clearly consumer benefits that would result from the proposed transaction, as we pointed out in the Final Notice there are also aspects that could pose economic risks to consumer interests. In particular, the Department must remain mindful of concerns regarding the potential for higher fares due to increased market concentration of the dominant carriers at both DCA and LGA.

In their filings, US Airways and Delta have not challenged the calculations stated in the May 2010 Notice that, if the transaction were approved as now proposed, the proportion of US Airways' share of slots and departures at DCA, and Delta's share of slots and departures at LGA, would significantly increase.

In the Department's earlier analysis, we determined that there were increased levels of airport concentration, which together with (1) An increase in the number of monopoly or dominant markets in which increased pricing power could be exercised,[29] (2) the prospect for higher fares in some markets, and (3) the potential for use of transferred slot interests in an anti-competitive manner,[30] warranted a conditioning of approval on the carriers' agreement to divest a number of slots. Given all of these concerns, we asserted that limited divestitures at both airports would cause an injection of additional competition from other carriers, which could be effective in mitigating these prospective harms.

Our analysis also noted the very low levels of LCC operations then prevailing at DCA and LGA, calculating that LCCs had only a 3.3 percent share of slot interest holdings at DCA and a 6.9 percent share of slot interest holdings at LGA. Because LCC's created the most competitive impact at the airports,[31] we required that, in order to minimize the overall number of divestitures required while maximizing the competitive impact of those divestitures, the carriers

[27] While it is true that Delta is proposing to expand its operations significantly at LGA, many of the new flights would represent backfills in markets being vacated by US Airways as it moved operations to DCA. Thus, while it might be ''new'' service on Delta, it may not be ''new'' service for the communities affected.

[28] The benefits data and analyses referenced in the Waiver Application are derived from the study prepared by Compass Lexecon in November 2009 and submitted to the Department on March 22, 2010. *See* Consumer Benefits from the Proposed US Airways Delta Slot Transaction, included in Joint Appendix to Comments of Delta Air Lines, Inc., and US Airways, Inc., Docket No. FAA–2010–0109, dated March 22, 2010. That study was based on Delta and US Airways schedules from a peak day (Thursday) in Summer 2009.

[29] Our analysis found that US Airways and Delta tended to charge higher relative fares where they operate monopoly or dominant routes from airports where they have strong presence. While Delta tended to price more competitively at LGA (where its position was less dominant than US Airways at DCA), US Airways, holding the highest current share of slot interests and departures at DCA, charged on average 124 percent of the Standard Industry Fare Level (SIFL), a cost-based index that the Department has used historically to assist in its evaluation of pricing. However, in markets where it held a 95 to 100 percent share of nonstop departures, US Airways charged substantially more. 75 FR at 7,309–7,310.

[30] Under their proposal, Delta and US Airways are not committing to any particular markets for defined periods. As we noted earlier, they would be free, as is any other carrier, to discontinue routes that are being proposed and to initiate new routes elsewhere. With that freedom, they could, if they so chose, use additional slots to target smaller competitors. We expressed concern that competitors, especially low-cost carriers at DCA that are tied to specific markets through slot exemption awards, might be unable to successfully respond.

[31] Our analysis cited studies of the domestic U.S. airline industry demonstrating that entry by low-fare carriers dramatically lowers fares and increases the volume of passengers carried in a market. See, 75 FR at 7,309.

divest slots to qualified new entrants and limited incumbents, which are largely LCCs. Through this mechanism, we believed the economic efficiency of the slot utilization at both airports would be maximized through the operation of more seats at lower fares per slot than by Delta or US Airways, and would also minimize the total number of slot divestitures required to remedy the anticompetitive effects of the transaction.

Accordingly, in the May 2010 Notice, we approved the prior waiver application subject to the condition that 40 LGA and 28 DCA slots be divested via a DOT-approved process.

Changed Conditions Since the May 2010 Notice Was Issued Have Not Eliminated Competitive Concerns

As discussed above, the Joint Applicants have claimed that the Department's earlier competitive concerns have already been addressed as a result of significant increases in LCC penetration that have occurred at both airports since the May 2010 Notice was issued. (Notwithstanding that claim, they have offered to divest up to 32 slots at LGA and 16 slots at DCA through a DOT process if necessary to alleviate any ''lingering'' competitive issues.)

LCC entry and increased presence at both airports have not addressed all of our competitive concerns. While we have found evidence that increased LCC presence at both airports has a positive impact on the competitive structure at these airports, additional remedies, including divestiture of slots and the implementation of the slot transfer between the applicants in tranches, are necessary to further address competitive concerns.

We agree that, at DCA, recent developments have added 44 slots to the LCC listings, increasing their percentage of slot operations from 3.3% to 8.5%. Similarly, recent developments at LGA have added 15 slots to LCC listings, increasing their percentage from 6.9% to 8.2%. LCC departures, seats, and passengers have, with one exception, all increased as well at DCA and LGA. At DCA, LCC departures from first quarter 2010 to first quarter 2011 increased from 4.7% of the total to 7.1%; seats over the same period increased from 6.8% to 9.2%; and passengers over the same period increased from 7.6% to 10.3%. At LGA, the comparable statistics are departures, 9.9% increasing to 10.0%; seats, 15.2% declining to 14.9%; and passengers, 17.0% increasing to 18.2%. See Tables 3 and 4.

In addition, we looked at the competitive impact of the added LCC services, particularly at DCA. There, the entry of JetBlue into the DCA–Boston market in the fourth quarter of 2010 was especially helpful in gauging the impact of new LCC entry into a major market in which US Airways was by far the dominant carrier.[32]

During the first three quarters of 2010, the average passenger weighted yields in DCA –BOS were 62 cents, 59 cents, and 53 cents respectively, with US Airways' averages being 68 cents, 63 cents, and 55 cents. With an average weighted yield over all DCA markets for these quarters at 22 cents, this was clearly a lucrative market for carriers, and especially so for US Airways. JetBlue entered the market aggressively in October 2010, carrying over 48,000 passengers that quarter with highly competitive fares that yielded only 24 cents per mile. US Airways' yield that same quarter—the last for which we have data—dropped from 55 cents to 44 cents, with overall average passenger weighted yields in the market falling from 52 to 38 cents. Removing seasonality concerns, US Airways' passenger weighted yield fell 37% from 4th quarter 2009 to 4th quarter 2010—from 70 cents to 44 cents. This data demonstrates JetBlue's entry enhanced competition and significantly reduced fares. Its presence continues to have a disciplining effect on fares: our check of available one-month advance purchase economy fares showed JetBlue charging $69 one-way, with US Airways, Delta, and United all matching.[33]

A similar, although less significant, demonstration of LCC competitive influence appears in the LGA–IND market. In 2009, US Airways carried approximately 39% of passengers in this market at an average yield of 27 cents, while Delta/Northwest carried 47% of passengers at an average yield of 28 cents. AirTran initiated service on November 4, 2009 following its acquisition of 6 slots from Continental, four of which were utilized in the LGA–IND market. After AirTran's entry into the market, the average passenger weighted yield dropped from 29 cents to 22 cents and remained at approximately 19 cents through 2010. AirTran's passenger share rose from 8% in 2009 to 35% in 2010 while Delta/Northwest's yields declined from 28 cents to 19 cents, and US Airway's yields declined from 27 cents in 2009 to 20 cents in 2010. Overall, with the entry of AirTran in the LGA–IND market the average passenger weighted yield in the market declined 29% between 2009 and 2010. These two impacts illustrate the potential beneficial effects that other LCCs may be able to bring to DCA and LGA markets if afforded entry by slots being divested in the present case.

While the Department considers these developments very encouraging, they do not persuade us that our original concerns regarding the transaction are no longer valid or that additional remedies are no longer appropriate or necessary. First, many of the incremental LCC slots are being operated under temporary or potentially reversible circumstances. At DCA, the slots noted as being transferred from legacy carrier American to LCC JetBlue remain technically held by American on FAA's listing, and their agreement could expire as early as this fall. The same is true for the slots transferred between AirTran and Continental. The former Midwest slots at both airports that were ''reassigned'' by Republic to Frontier marketed flights can presumably be ''reassigned'' back to Republic if appropriate conditions presented themselves. In addition, some of the other slots shown as transferred to LCCs are during the early or late hours when slots are not fully subscribed and so their use by LCCs does not present as much a competitive discipline as better timed slots might. Moreover, the Department's objective here is not to simply increase the shares of LCCs, but, as we set out at various points in the May 2010 Notice, also to protect against the use of market power by dominant carriers in a potentially anticompetitive manner.

Claims That Nearby Metropolitan Airports Have a Disciplining Effect Remain Unpersuasive

In addition to pointing to LCC growth at DCA and LGA, the Joint Applicants reassert that competition among the three airports in the Washington area and the three in the New York City area exerts a disciplining influence on the respective fares at DCA and LGA.[34] Thus, in the New York City market, they argued that, while flights at LGA are generally closer substitutes for one another than are flights at EWR or JFK, flights from EWR and JFK ''are still relevant'' to a discussion of competition at LGA. In an effort to address the specific situations at hand, they offered a modified version of the earlier study they presented to attempt to measure the impact of competition from

[32] For example, in the second quarter of 2010, US Airways carried almost 70% of the passengers in this market, trailed by Delta at 18%.

[33] DCA–BOS nonstop fare for travel on July 29, 2011, per ORBITZ Web site information as of June 29, 2011.

[34] Delta and US Airways' Comments of March 22, 2010, Appendix B, *Analysis of Relevant Airport Groupings.* Docket No. FAA–2010–0109.

Southwest and other LCCs at DCA/LGA and at adjacent airports. Normalizing the ''competitive effect'' of Southwest at the same airport to a value of 1.0, the modified version went on to specify the relative competitive effect of service by other LCCs at the same airport, as well as the effects of Southwest and of the LCCs from adjacent airports. A summary table indicated that, for example, the competitive effect of an AirTran flight at the same airport was 0.247, while that of JetBlue at an adjacent airport was 0.091.

In our May 2010 Notice, we addressed the findings of the earlier study, expressing concerns that its methodology was flawed in a number of fundamental respects. The modified version put forward here does not appear to have corrected these flaws. Moreover, not only are the statistical bases for the new conclusions not presented, but the results show anomalies that are not explained.[35] In sum, as with the earlier presentation, we are not prepared to accept the conclusions as submitted and to agree with the Joint Applicants that existing or potential competition from adjacent airports would satisfactorily address the need for remedies in this case.[36]

Evaluation of Risks and Benefits

As discussed above, the proposed transaction, like the prior 2009 proposal, offers important benefits to the public. Nonetheless, we found earlier that the potential for harm was substantial, particularly in the increased levels of concentration at the two airports. Accordingly, we placed conditions for approval on the divestiture of 40 slots at LGA and 28 slots at DCA. The primary issue before us is whether, because of the increased penetration by LCCs at the airports since the time of our last review, the public interest can be adequately protected at this time with no or fewer divestitures being required.

In evaluating the public interest in this transaction, we have carefully weighed the benefits and possible adverse consequences of the transaction. We do not believe that the transaction can be approved without divestitures being required. The transaction may give rise to very different levels of competitive harm at each airport, and the post-transaction market share levels are high, particularly at DCA.[37] Accordingly, we have tentatively found that conditions for approval remain necessary. These include a requirement that the carriers not only dispose of 32 slots at LGA and 16 slots at DCA pursuant to the sale mechanisms described in detail below, but that they begin operations of the transferred slots in two phases so as to attenuate the impacts of their new operations on their smaller-sized competitors at the airports.

Remedies

Divestiture

For these reasons, notwithstanding the favorable impacts of increased LCC competition at both airports, we tentatively condition the grant of the requested waiver on the divestiture of the slots as set out below. These total 32 slots at LGA (16 arrival and 16 departure) and 16 slots at DCA.

We propose that the slots be sold by the carriers and that the proceeds of the sales be collected and retained by the carriers. We tentatively select this method, rather than one whereby the FAA would withdraw the slots and reallocate them by lottery (or similar means) to new entrant and limited incumbent carriers. A sale would facilitate the Joint Applicants' intentions to maximize the value of their slots as they initially intended and conforms to the High Density Rule provisions at DCA, which permit slots to be purchased or sold. 14 CFR 93.221(a).

These slots would be divested, in accordance with the procedures proposed below, to limited incumbent and new entrant carriers having fewer than five percent of the total slot holdings at DCA and LGA respectively, and that do not code share to or from DCA or LGA with any carrier that has five percent or more slot holdings. We also propose that carriers eligible to participate in the purchase of divested shares not be subsidiaries, either partially or wholly owned, of a company whose combined slot holdings are equal to or greater than 5 percent at DCA or LGA, respectively.[38] The effects of these additional divestitures are as set forth below:

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[35] Why, for example, would JetBlue have a much stronger competitive effect than Air Tran at the same airport (a 0.635 factor vs. a 0.247 factor), but a significantly lower effect than AirTran from an adjacent airport? (0.091 vs. 0.164).

[36] That said, we can say as we did in the May 2010 Notice that yields (*i.e.,* revenue per passenger mile) remain substantially different among these airports, and that if the airports were effective economic substitutes for all passengers, there would result a greater self-equalizing of yields and the yield spreads would not differ so significantly. We also recognized that there does exist a low level of competition among the Washington and New York City area airports, but at an insufficiently low level such that one airport can exert enough competitive influence on the fares at another airport to substantially reduce yield disparities among the airports and constitute a true substitute for it. We continue to believe that is the case.

[37] With Republic's holdings included, US Airways would hold 54% of the slots, with its closest competitor, American, holding 12.3%. At LGA, Delta's share would be 47.5% without further divestitures, with its closest competitor (also American) at 20.6%. See Table 6.

[38] An anomaly in this regard appears to be Frontier, which is wholly owned by Republic but yet has a discretely different LCC business plan. As we discussed above, Frontier's operations at DCA and LGA have been consistent with LCC yields, and have had useful competitive impacts at both airports. Moreover, with the acquisition of AirTran by Southwest, the number of LCCs has diminished, and Frontier has become the third largest LCC after Southwest and JetBlue. DOT's Form 41 Origin and Destination Passengers for 2010 shows Southwest/AirTran with a total of 87,025,480 domestic passengers, JetBlue with 18,548,950, and Frontier with 5,317,150. Anticipating that Frontier's presence as an eligible bidder will help to stimulate and maintain competition at these airports, we will tentatively exempt Frontier from the ''no subsidiaries'' requirement, subject to any slots it might purchase being held and operated by Frontier and Frontier retaining its LCC business plan.

Table 7

DCA Slots showing effect of Proposed Divestitures

	Slots "Original" 1/	Share	Slots 4/1/2011	Share	Post Divestiture	Share
AIR CANADA	16	1.9%	16	1.9%	16	1.9%
AIRTRAN AIRWAYS 2/	16	1.9%	24	2.8%	24	2.8%
ALASKA AIRLINES	6	0.7%	6	0.7%	6	0.7%
AMERICAN AIRLINES	121	14.5%	105	12.3%	105	12.3%
UNITED/CONTINENTAL AIRLINES	83	10.0%	76	8.9%	76	8.9%
DELTA AIR LINES 3/	193	23.2%	200	23.5%	100	11.8%
FRONTIER AIRLINES 4/	6	0.7%	22	2.6%	22	2.6%
JETBLUE AIRWAYS CORP. 5/	0	0.0%	18	2.1%	18	2.1%
MIDWEST AIRLINES	18	2.2%	0	0.0%	0	0.0%
SPIRIT AIRLINES	6	0.7%	6	0.7%	6	0.7%
SUN COUNTRY AIRLINES, INC.	0	0.0%	2	0.2%	2	0.2%
US AIRWAYS/REPUBLIC 6/	367	44.1%	376	44.2%	460	54.1%
Divested Slots					16	1.9%
Total	832	100%	851	100%	851	100%

	Slots		Slots		Slots	
US Airways 7/	367	44.1%	376	44.2%	460	54.1%
Delta	193	23.2%	200	23.5%	100	11.8%
LCC Share	28	3.3%	72	8.5%	88	10.3%

1/ Distribution of slots as considered in the Department's Final Notice of May 4, 2010
2/ Continental traded six slots to AirTran; AirTran operates the slots but CO remains the holder
3/ The increase from "Original" to 4/1/2011 is due to Delta acquiring additional off-peak slots from the FAA
3/ After acquisition by Republic, of Midwest's 18 slots, 16 were reassigned to Frontier and 2 were reallocated to Sun Country
5/ American traded 16 slots to JetBlue; JetBlue operates the slots but AA remains the holder
6/ After acquisition by Republic, of Midwest's 18 slots, 16 were reassigned to Frontier and 2 were reallocated to Sun Country. Republic holds 113 commuter slots and US Airways holds 254 slots
7/ Includes 113 commuter slots held by Republic
Source: Typical weekday (Thursday), FAA Holder Report status date 4/1/2011

The impacts of the divestitures at LGA are shown in Table 8:

Table 8

LGA Slots showing effect of Proposed Divestitures

	Slots "Original" 1/	Share	Slots 4/1/2011	Share	Post Divestiture	Share
AMERICAN AIRLINES	236	20.6%	236	20.6%	236	20.6%
AIR CANADA	43	3.7%	43	3.8%	43	3.8%
UNITED/CONTINENTAL AIRLINES	94	8.2%	94	8.2%	94	8.2%
DELTA AIR LINES	278	24.2%	278	24.3%	511	44.7%
FRONTIER AIRLINES 2/	5	0.4%	19	1.7%	19	1.7%
JETBLUE AIRWAYS CORP.	15	1.3%	15	1.3%	15	1.3%
MIDWEST AIRLINES	18	1.6%	0	0.0%	0	0.0%
SPIRIT AIRLINES	22	1.9%	22	1.9%	22	1.9%
SOUTHWEST AIRLINES	15	1.3%	15	1.3%	15	1.3%
AIRTRAN AIRWAYS	22	1.9%	23	2.0%	23	2.0%
US AIRWAYS	399	34.8%	399	34.9%	134	11.7%
Divested Slots					32	2.8%
Total	1147	100%	1144	100%	1144	100%

	Slots		Slots		Slots	
Delta	278	24.2%	278	24.3%	511	44.7%
US Airways	399	34.8%	399	34.9%	134	11.7%
LCC Shares	79	6.9%	94	8.2%	126	11.0%

1/ Distribution of slots as considered in the Department's initial Final Notice.
2/ 15 Republic slots are being operated as Frontier
Source: Typical weekday (Thursday), FAA Holder Report status date 4/1/2011

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Implementation in Tranches

We are concerned that, were US Airways and Delta to immediately commence service with the full complement of the newly transferred slots at DCA and LGA, respectively, the successful start-up or expanded service offered by the new entrant or limited incumbent receiving the divested slots could be placed at competitive risk.

We believe that the ability of these new services to establish a market foothold on any new routes that the carriers receiving the divested slots choose to serve from either DCA or LGA would be facilitated by a requirement that the slots being transferred between the applicants be spread over a period of time following the completion of the mandated slot divesture.

As a result, we are proposing to further condition our approval of the transaction on the Joint Applicants' agreement that the transferee Joint Applicant will operate [39] none of the newly acquired slots included in their Agreement during the first 90 days after the closing date for the sale of the divested slots. Furthermore, no more than 50 percent of the total number of slots included in the Agreement could be operated by the transferee Joint Applicant between the 91st and the 210th day following the closing date for the sale of the divested slots, after which time the transferee would be free to operate the remainder of the slots.

We believe that these restrictions will afford the services that result from the sale of the divested slots a limited, but reasonable, period of time to advertise their presence in any new markets in which they are planning to offer service, begin selling tickets, and commence operations. Limiting the resources by which the applicants could immediately challenge any service using divested slots during the initial months of the transition will, in our view, provide greater assurance that the remedial competitive services that we sought to encourage by requiring the slot divestiture in the first place will prove to be successful.

Eligible ''Bidders'' for Divested Slots

We tentatively find that the eligible bidders for the divested slots must be carriers having fewer than five percent of total slot holdings at DCA and/or LGA, do not code share to or from DCA or LGA with any carrier that has five percent or more slot holdings or are involved in a code-share relationship at DCA/LGA with carrier(s) that also would not qualify as eligible bidders, and are not subsidiaries, either partially or wholly-owned, of a company whose combined slot interest holdings are equal to or greater than five percent at LGA and/or DCA.[40] Based on FAA slot holding data, incumbent carriers at DCA that would qualify under these limitations are AirTran, Spirit, Sun

[39] These limitations apply to the operation of the slots by the acquiring carrier or by any other carrier on behalf of the acquiring carrier.

[40] As noted above, Frontier qualifies as an eligible bidder due to its unique business plan and relationship in the Republic structure.

Country, JetBlue and Frontier. At LGA, incumbent carriers that would qualify are AirTran, Southwest, Frontier, JetBlue, and Spirit. In addition, of course, any carrier not currently holding slot interests at the respective airports and otherwise meeting the criteria would be eligible under our proposal.

Bundles for Divested Slots

We tentatively find that bundling the packages of slots for sale will enable an eligible carrier to purchase sufficient slots to operate competitive service, with times spread across the day. Bundling assists a purchasing carrier to initiate or increase service in a way that meets its operational needs and enhances competition.[41]

Because the number of overall divested slots is now fewer than we originally proposed in the Final Notice and competitive concerns remain, we believe it appropriate to maximize the potential competitive discipline of the slots by packaging more slots in fewer bundles, rather than fewer slots in more bundles, as compared to the bundles we adopted in the May 2010 Notice.[42] We propose to bundle for sale 8 slot pairs at each airport, meaning that there would be one bundle at DCA and two bundles at LGA. In addition to maintaining high competitive discipline levels, we tentatively believe this arrangement would be preferable to dividing the slots into smaller packages that could cause underutilizations or inefficiencies—at gates and terminal facilities, with aircraft and in staffing. We seek comment on this approach.

More specifically, at DCA the single bundle would include the following slots: 0700, 0800, 0800, 0900, 1000, 1000, 1100, 1200, 1300, 1400, 1600, 1700, 1800, 1800, 2000, and 2100.

At LGA, Bundle A would consist of:

0600D, 0630D, 0730A, 0830D, 0830A, 0930D, 1100A, 1230D, 1300A, 1400D, 1500A, 1600D, 1700A, 1830D, 2000A, and 2100A

LGA's Bundle B would be:

0630D, 0700D, 0800A, 0930D, 1000A, 1030D, 1230A, 1330D, 1430A, 1600D, 1630A, 1730D, 1830A, 1930D, 2030A, and 2130A.

Procedures for Transferring Divested Slots

We propose that the slots be sold to the new entrant/limited incumbent carriers, which have necessary DOT and FAA operating authorities, on a cash-only basis, through a Web site managed by the FAA. Under this proposal, the FAA would specify a bid closing date and time and the bidder's identities would not be revealed.

We also propose that an eligible carrier may purchase only one slot bundle at each airport, except at the seller's option as discussed later. This limitation would balance the Department's interest in maximizing the competitive discipline of the slots with creating an opportunity for at least two carriers to obtain the slots. We propose to permit an eligible carrier to register for each slot interest bundle that it wishes to buy, and assign it a random number for each registration so no information identifying the bidder is available to the seller or public. A bidder would be allowed to indicate its preference ranking for each slot interest bundle as part of its offer. Finally, the FAA would review the offers for each bundle in order.

We propose to require all offers to purchase slot bundles to be sent to the FAA electronically. The offer would have to include the prospective purchaser's assigned number, the monetary amount, and the preference ranking for that slot interest bundle. The FAA would post all offers on the Web site as soon as practicable after they are received. Each purchaser would be able to submit multiple offers until the closing date and time.

Once the sales period closes, we propose that the FAA would determine the highest offer for each bundle. If each bundle had only a single offer, the FAA would notify the seller by forwarding the purchaser's identification. If one eligible carrier had made the highest purchase offer on multiple bundles, the FAA would determine which offer will be valid based on preference ranking and bundle order. The FAA would identify the next-highest offer from a carrier that remains eligible to purchase the bundle as the successful offer on the other bundles. This information would be forwarded to the respective seller. The FAA would also provide information about the amount of the highest offer, and the selling carrier may choose to accept the highest offer instead of the offer identified by the FAA. Upon acceptance, the FAA would notify the selling and purchasing carriers to allow them to carry out the transaction, including any gate and ground facilities arrangements. The full amount of the proceeds could be retained by the selling carrier. The seller and purchaser would be required to notify the FAA that the transaction has been completed and certify that only monetary consideration will be or has been exchanged for the slot interest bundles.

In the unlikely event that there are no offers for a slot interest, we propose that those slot interests will revert automatically to the FAA. If necessary, we would announce at a later date a means for disposing of or retiring a slot interest that attracts no purchase offer. We do not expect that this need will arise.

We propose the option of a cash-only, FAA ''blind'' Web site, because it has the capability of maximizing the competitive potential of the divestiture packages because that sale method would target the potential competitors with the greatest economic incentive to use slots as intensively and efficiently as possible. We seek comments on this proposal.

Other Considerations

We also tentatively find that eligible carriers may be unable to use the slots if they cannot obtain access to gates, ticket counters, baggage handling services, loading bridges, and other ground facilities at either DCA or LGA. Accordingly, we propose to require the selling carrier to make these available to the purchaser under reasonable terms and rates if the purchasing carrier lacks access to gates and ground facilities and is unable to obtain such access from either the Port Authority of New York and New Jersey, the operator of LGA, or from the Metropolitan Washington Airports Authority, the operator of DCA.

We propose to subject the slots to the same minimum usage requirements as provided in the LGA Order and HDR. However, we propose to waive the respective use or lose provisions of the LGA Order and HDR for 6 months following purchase to allow the purchaser to begin service in new markets or add service to existing markets. The purchaser must initiate service no later than 6 months following purchase. We seek comment on the conditions described above.

We further propose that the purchaser may lease the acquired slots to the seller until the purchaser is ready to initiate service to maximize operations at the airports. However, we tentatively would require that the slots not be sold or leased to other carriers during the 12 months following purchase because the purchaser must hold and use the acquired slots.

Purchasers could engage in one-for-one trades of these slots for operational needs. The limitations would attach to the slot acquired by the eligible carrier in a one-for-one trade. Any one-for-one trades would be subject to the FAA notice requirements in the LGA Order and HDR. We further propose that the duration of any trades or leases of LGA

[41] *See also,* 75 FR at 7,311 and 75 FR at 26,337.

[42] *See* 75 FR at 26,337.

slots may not exceed the duration of the LGA Order.

We additionally propose that, after the initial 12 months, and for four years thereafter, the slots may be sold, traded, or leased (as authorized by the HDR at DCA and otherwise as authorized at LGA) to any carrier that at the time of the sale, trade, or lease would have met the eligibility requirements to make an offer under this proposed waiver for the divested slot interests. These proposed restrictions would increase the probability that the divested slots are used and operated by carriers that will enhance competition at LGA and DCA, lower fares, and benefit the traveling public. We recognize, however, that restrictions on alienation of these slots may depress their value for the carriers holding them. In order to balance the need and desire of those carriers to maximize the value of the divested slots with the Department's desire to afford the traveling public a broad array of competitive service, we propose that the alienation restrictions on the divested slots terminate after a total of five years following initial sale.

Tentative Findings

We have carefully evaluated the risks and potential benefits of the proposed transaction, focusing our public interest analysis on the effects arising from that transaction as a whole. We tentatively conclude that, on balance, the potential benefits of the proposed transaction, as modified by the required slot divestitures to new entrant and limited incumbent carriers and by implementation in tranches, outweigh its potential harms. This tentative decision would also allow us to preserve the other important benefits resulting from the transaction, such as a more efficient use of slots at both airports and a potential for enhanced service benefits to passengers.

Invitation for Comment

The agency has placed a copy of the waiver request in the docket. The FAA invites all interested members of the public to comment on the waiver request, proposed grant of the waiver, proposed conditions to the waiver, and proposed divestiture remedy. Several commenters, including JetBlue Airways Corporation, Spirit Airlines, Inc., and the Air Carrier Association of America, have filed comments in the Docket to the waiver request. We will review all previously-filed comments (unless withdrawn), with all comments submitted within this comment period, in making our final determination on the waiver request.

Issued in Washington, DC, on July 21, 2011.

Ray LaHood,

Secretary.

J. Randolph Babbitt,

Administrator, FAA.

[FR Doc. 2011–18939 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before August 12, 2011.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Ave., SE, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 21, 2011.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	ApplicantRegulations affected	Nature of special permits thereof	
MODIFICATION SPECIAL PERMITS				
9168–M		All-Pak Dangerous Goods, a Berlin Packaging (Former Grantee All-Pak, Inc.), Bridgeville, PA.	49 CFR Part 172; Subpart E; 173.118; 173.244; 173.345; 173.346; 173.359; 173.370; 173.377; 175.3; 175.33; 172.504; 173.3.	To modify the special permit to authorize an additional mode of transportation (cargo vessel.)
12092–M		KMR Industries, LLC, Columbia, MD.	49 CFR 173.34(e)	To modify the special permit to authorize additional modes of transportation (rail and cargo vessel).
14743–M		TIER Environmental Services, Inc. (Former Grantee TIER DE, Inc.), Gap, PA.	49 CFR 173.24b and 173.244.	To modify the special permit to authorize one-time, one-way transportation in commerce of an additional non-DOT specification metal tank containing approximately 1320 lbs. of sodium by motor vehicle.

Application No.	Docket No.	ApplicantRegulations affected	Nature of special permits thereof	
14778–M	PHMSA–08–0275.	Metalcraft/Sea Fire Marine Inc., Baltimore, MD.	49 CFR 173.301(f)	To modify the special permit to authorize the transportation in commerce of additional non-DOT specification cylinders containing a Division 2.2 compressed gas for export only.
14924–M		Explosive Service International Ltd., Baton Rouge, LA.	49 CFR 176.144(e), 176.145(b), 176.137(b)(7), 176.63(e), 176.83 and 176.138(b).	To modify the special permit to authorize the transportation in commerce of certain Division 1.1D and 1.4B explosives by vessel in an alternative configuration.

[FR Doc. 2011–18839 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 29, 2011.

Address Comments To: Record Center, Pipeline and Hazardous Materials, Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 21, 2011.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
NEW SPECIAL PERMITS				
15220–N	.....	GasCon (Pty) Ltd Cape Town.	49 CFR 178.274(b) and 178.277(b)(1).	To authorize the manufacture, marking, sale and use of UN portable tanks that are designed, constructed, certified and stamped in accordance with Section VIII Division 1, latest edition, of ASME Code. (modes 1, 2, 3)
15381–N	.....	ATK Clearfield, UT	49 CFR 178.71	To authorize the transportation in commerce of certain UN cylinders which have been alternatively tested. (modes 1,4)
15382–N	.....	Lockheed Martin Space Systems Company Sunnyvale, CA.	49 CFR 177.834(1)(1)	To authorize the transportation in commerce of certain Division 1.4 explosives in a motor vehicle equipped with a cargo heater that has not been rendered inoperable. (mode 1)
15384–N	.....	TEA Technologies, Inc. Amarillo, TX.	49 CFR 180.509	To authorize an alternative method of retest for DOT Specification 107A cylinders for use in transporting liquified or nonliquefied compressed gases, or mixtures. (modes 1, 2, 3)
15386–N	.....	MAC, LLC Bay Saint Louis, MS.	49 CFR 173.56	To authorize the one-time, one-way transportation in commerce of two (2) 5-gallon buckets containing wetted waste primers and three (3) 5-gallon buckets containing wetted waste propellant by a contract carrier for disposal without an EX approval. (mode 1)
15389–N	.....	AMETEK Ameron LLC d/b/a MASS Systems Baldwin Park, CA.	9 CFR 49 CFR 173.301(a)(1), 173.301(a)(1), 173302a(a)(1), and 173.304a(a)(1).	To authorize the manufacture, marking, sale and use of on-DOT specification highpressure longitudinal welded and drawn cylinder for transportation of compressed oxygen, flammable or non-flammable gases. (modes 1, 2, 3, 4, 5)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15397–N	.....	Northern Pioneer Helicopters, LLC Big Lake, AK.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300 and 172.400.	To authorize the transportation in commerce of certain hazardous materials by cargo aircraft including by external load in remote areas of Alaska without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)
15399–N	.....	Cheyenne Light Fuel and Power Company.	49 CFR 173.301(a)(1) and 173.302a.	To authorize the transportation in commerce of a Type 4 cylinder, resin impregnated, and fully wrapped continuous filament with a non-metallic liner containing methane. (mode 1)

[FR Doc. 2011–18837 Filed 7–27–11; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Innovative Techniques for Delivering ITS Learning; Request for Information

AGENCY: Research and Innovative Technology Administration (RITA), U.S. Department of Transportation (USDOT).

ACTION: Notice.

SUMMARY: This notice is a Request for Information (RFI) and comments that will be used to help identify focus areas for innovative techniques for delivering Intelligent Transportation Systems (ITS) learning. Feedback and comments on any aspect of the RFI are welcomed from all interested public, private, and academic entities. While all feedback is welcomed, USDOT is particularly interested in feedback on the questions provided in the last section of this RFI.

RFI Guidelines: Responses to this RFI should be submitted by August 29, 2011. Responses to this RFI should be delivered electronically as an e-mail or as an attachment to an e-mail sent to *pcbits@dot.gov.*

Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the government for program planning on a non-attribution basis. If you wish to submit any information under a claim of confidentiality, you should submit via e-mail to the address given below under **FOR FURTHER INFORMATION CONTACT**, your complete submission, including the information you claim to be confidential commercial information. When you submit information containing information identified as confidential commercial information, you should include a cover letter setting forth the reasons you believe the information qualifies as ''confidential commercial information.'' (49 CFR 7.13(c)(4) and 7.17) If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552), but we will process the request in accordance with the procedures found in 49 CFR 7.17.

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, contact Mac Lister, ITS Professional Capacity Building (PCB) Program Manager, 1200 New Jersey Avenue, SE., Washington, DC 20590, 202–366–0375, e-mail: *mac.lister@dot.gov.* For legal questions or issues, please contact Robert Monniere, RITA, 202–366–5498, *Robert.monniere@dot.gov,* 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours for RITA are from 8 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, except Federal holidays. Additional information about the ITS Joint Program Office (JPO) and the PCB Program can be obtained at *http://www.its.dot.gov/index.htm* and *http://www.pcb.its.dot.gov/default.asp.* A fact sheet regarding the ITS PCB Program can be found at: *http://www.its.dot.gov/factsheets/pcb_factsheet.htm.*

SUPPLEMENTARY INFORMATION:

Summary of PCB Program

The ITS PCB Program is part of the ITS JPO, within USDOT, RITA. The ITS PCB Program provides comprehensive, accessible, and flexible ITS learning for the transportation industry. By using the Program, public agencies can build and sustain a capable and technically proficient ITS workforce, and transportation professionals can develop their knowledge, skills, and abilities while furthering their career paths.

The Program currently offers online courses, blended learning courses, the Talking Transportation Technology webinar series, and Peer-to-Peer exchanges. It recently partnered with the Institute of Transportation Engineers to develop ITS Standards Training; the first 18 Web-based training modules will be offered in fall 2011.

New Strategic Direction for PCB

The PCB Program is refocusing its agenda to prepare the transportation workforce to adopt new connected vehicle technologies and to take better advantage of proven ITS solutions. You can view the ITS PCB Program strategic plan online at: *http://www.pcb.its.dot.gov/strat_direction_plan.asp.*

The Program is responding to customer needs regarding time and budget constraints on training opportunities and the desire to use emerging social media tools to better engage and collaborate with its audience. In this context, the ITS PCB Program is seeking information about possible topics and innovative techniques for delivering ITS learning to working transportation professionals.

Subject Matter

The ITS PCB Program is interested in providing innovative learning techniques in the general area of ITS, with two areas of focus: (1) Proven ITS technologies that are ready to deploy and (2) emerging connected vehicle technology that will feature a connected transportation environment among vehicles, the infrastructure, and passengers' portable devices. Information about the ITS connected vehicle research program can be found at: *http://www.its.dot.gov/connected_vehicle/connected_vehicle.htm.*

Target Audience

The PCB Program serves the ITS workforce, which includes researchers, practitioners, decision makers, and emerging ITS professionals, both in the public and private arena. In the last 15 years, the Program has focused its efforts on educating transportation managers, engineers and technical staff at state and local departments of transportation and transit agencies to

plan, implement, operate and maintain ITS technology investments. The Program is interested in expanding these efforts to include communicating emerging research results from the connected vehicle program to a wider audience of transportation professionals, including future ITS professionals at the college and university levels. Where possible, the Program wishes to partner with professional associations, universities, or others to deliver ITS learning to affiliated members in the most efficient and effective manner.

New Delivery Mechanisms for ITS Learning

The ITS PCB Program promotes ITS learning that is engaging, effective, and responsive to customer needs. We are seeking ideas for innovative learning techniques that are:

- Interactive;
- Collaborative—through the use of social media or other 'virtual' meeting spaces;
- Designed for the adult learner;
- Internet-based to reduce time and expense;
- Targeted to specific ITS audiences;
- Results oriented with the goal of moving ITS into deployment.

The USDOT has issued this RFI to help determine the most promising technologies and applications. Responders are reminded that feedback or comments on any aspect of this notice are welcomed from all interested public, private, and academic entities. While all feedback is welcomed, the USDOT is particularly interested in feedback on the following questions. Respondents may respond to some, all, or none of these specific questions.

List of Questions

1. In what specific content areas does the transportation profession most need learning regarding ITS technologies?

2. Are there different audience needs for ITS learning? How would you segment these audiences? Examples might be by role, such as planner, engineer, decision maker, researcher, or by organization, such as state department of transportation, transit agency, universities, or private sector organizations.

3. Are there specific educational methods or techniques that the USDOT could employ to accelerate the movement of ITS technologies into deployment that would lower the cost and improve the quality of ITS learning? What are these, and how might they be implemented? Examples could be e-learning techniques, interactive games, or simulations. The learning techniques do not have to be specific to ITS, but must be adaptable to an audience of working transportation professionals.

4. The ITS JPO is particularly interested in the use of video to demonstrate ITS technologies in use for training purposes.

a. Are you aware of or do you possess video depicting the application of ITS technology, a guest speaker or expert discussing an important ITS concept, or a transportation agency representative, public official, or citizen describing the benefits of ITS technology in his or her community?

b. How might videos be incorporated into Web-based courses to better engage adult learners?

5. Are you aware of any ITS training applications that work on a mobile phone or smart phone platform? Examples might relate to traffic and weather alerts, route planning tools, or eco-driving applications. How could this ITS technology be adapted to serve as a training tool for potential ITS deployers?

6. How might social media collaboration tools be used to engage audiences in ITS learning? Examples might include using a social media site for collaboration on coursework, or enabling text messages for quick responses during an e-learning.

7. Are you aware of any learning materials beyond what has been developed by the USDOT that explain the concepts of connected vehicle technology? This technology may be based on Dedicated Short Range Communications (DSRC), other wireless technology or a combination. The Connected Vehicle Research Program has developed Vehicle-to-Vehicle and Vehicle-to-Infrastructure Test Beds. Information about these facilities may be found here: *http://www.its.dot.gov/connected_vehicle/technology_testbed2.htm.*

a. What kind of Web-based training should be developed to illustrate the concepts of connected vehicle technology to an audience of potential deployers?

b. What kinds of hands-on exercises could be incorporated in Web-based training to demonstrate the utility of the DSRC or commercial broadband equipment in enabling connected vehicle concepts?

c. How might the Vehicle-to-Vehicle and Vehicle-to-Infrastructure Test Beds be used as teaching tools over the next five years?

Issued in Washington, DC, on the 21st day of July 2011.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2011–19090 Filed 7–27–11; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 22, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by contacting the Treasury Departmental Office Clearance Officer listed. Comments regarding this information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before August 29, 2011 to be assured of consideration.

Office of Foreign Assets Control (OFAC)

OMB Number: 1505–0167.

Type of Review: Revision of a currently approved collection.

Title: Cuban Remittance Affidavit.

Form: TD F 90–22.52.

Abstract: The information is required of persons subject to the jurisdiction of the United States who make remittances to persons in Cuba pursuant to the general licenses in 515.570 of the Cuban Assets Control Regulations, 31 CFR Part 515 (CACR). The information will be used by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury to monitor compliance with regulations governing unlimited family and family inherited remittances, periodic $500 remittances, unlimited remittances to religious organizations, remittances to students in Cuba pursuant to an educational license, limited emigration remittances, and periodic remittances from blocked accounts.

Respondents: Individuals or Households.

Estimated Total Annual Burden Hours: 100,000.

Departmental Office Clearance Officer: James Earl, DO/Office of Foreign Assets Control, 1500 Pennsylvania Ave., NW., Rm. 5205, Washington, DC 20220; (202) 622–1947.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–19019 Filed 7–27–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Office of Inspector General, Treasury.

ACTION: Notice of Alteration to a Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Office of Inspector General (OIG) gives notice of alterations to its Privacy Act systems of records entitled ''Treasury/DO .191—Human Resources and Administrative Records System.''

DATES: Comments must be received no later than August 29, 2011. The altered system of records will be effective September 6, 2011 unless the OIG receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Counsel to the Inspector General, Office of Counsel, Office of Inspector General, 740 15th Street, NW., Suite 510, Washington, DC 20220, Attention: Revisions to PA Systems of Records. Comments can be faxed to 202–927–6492, or e-mailed to *delmarr@oig.treas.gov.* For e-mails, please place ''Revision to SOR'' in the subject line. Comments will be made available for inspection upon written request. The Department will make such comments available for public inspection and copying at the above-listed location, on official business days between the hours of 9 a.m. and 5 p.m. Eastern Time. Persons wishing to inspect the comments submitted must request an appointment by telephoning 202–927–0650. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Richard K. Delmar, Counsel to the Inspector General, Office of Inspector General, 740 15th Street, NW., Washington, DC 20220, by phone at 202–927–3973, or by e-mail at *DelmarR@oig.treas.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the Office of Inspector General (OIG) completed a review of its Privacy Act system of records notice. As a result of the review, the OIG is proposing to add additional categories of individuals covered by the system; a new purpose; new language to routine use (1); an update on how the information is retrieved; designation of a new system manager and address; and new record source category to Treasury/DO .191 in order to perform necessary functions to prevent loss or damage to any party by reason of false or fictitious financial instruments or documents.

The notices were last published in their entirety on April 20, 2010. The proposed alterations to system of records Treasury/DO .191 entitled ''Human Resources and Administrative Records system,'' follow:

Treasury/DO .191

SYSTEM NAME:

Human Resources and Administrative Records System

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of change: Remove current entry and in its place add the following:

''(A) Current and former employees of the Office of Inspector General.

(B) Individuals who are: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants; parties who have been identified by the Office of Inspector General, constituent units of the Department of the Treasury, other agencies, or members of the general public, in connection with the authorized functions of the Inspector General.''

* * * * *

PURPOSE(S):

Description of change: The period ''.'' at the end of the paragraph is replaced with a semicolon '';'', and the following language is added at the end thereof: ''and (4) collect and maintain information provided to the OIG concerning violation of any criminal or civil law made against or regarding individuals associated or claiming association with the Department of the Treasury.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Description of change: The period ''.'' at the end of routine use (1) is replaced with a semicolon '';'', and the following language is added at the end thereof: ''or to any private entity in order to prevent loss or damage to any party by reason of false or fictitious financial instruments or documents.''

* * * * *

RETRIEVABILITY:

Description of change: After the second sentence, add the following sentence: ''Financial instrument fraud database information may be accessed by name and address.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: Remove the current text and add the following: ''Assistant Inspector General for Management, 740 15th St. NW., Suite 510, Washington, DC 20220. For records provided by the general public concerning financial instrument fraud: Counsel to the Inspector General, 740 15th St., NW., Suite 510, Washington, DC 20220.''

* * * * *

RECORD SOURCE CATEGORIES:

Description of change: The period ''.'' at the end of the paragraph is replaced with a semicolon '';'', and the following language is added at the end thereof: ''persons providing information concerning or alleged to be committing financial instrument fraud.''

* * * * *

Dated: June 18, 2011.

Veronica Marco,

Acting Deputy Assistant Secretary for Privacy and Treasury Records.

[FR Doc. 2011–19121 Filed 7–27–11; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 145 July 28, 2011

Part II

Bureau of Consumer Financial Protection

12 CFR Part 1081
Rules of Practice for Adjudication Proceedings; Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1081

[Docket No. CFPB–2011–0006]

RIN 3170–AA05

Rules of Practice for Adjudication Proceedings

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Section 1053(e) of the Consumer Financial Protection Act of 2010 requires the Bureau of Consumer Financial Protection (''CFPB'' or ''Bureau'') to prescribe rules establishing procedures for the conduct of adjudication proceedings conducted pursuant to section 1053. This interim final rule with a request for public comment sets forth those rules.

DATES: This interim final rule is effective on July 28, 2011. Written comments must be received on or before September 26, 2011.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0006,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1801 L Street, NW., Washington, DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036, (202) 435–7275.

SUPPLEMENTARY INFORMATION:

The Bureau herein promulgates its Rules of Practice Governing Adjudication Proceedings (''Rules''), pursuant to section 1053(e) of the Consumer Financial Protection Act of 2010 (''Act''),[1] 12 U.S.C. 5563(e). The Rules are promulgated as interim final rules with a request for comment. The Bureau invites interested members of the public to submit written comments addressing the issues raised herein.

A. Background

The Rules will govern proceedings brought under section 1053 of the Act, 12 U.S.C. 5563, which authorizes the Bureau to use administrative adjudications to ensure or enforce compliance with (a) the provisions of the Act, (b) the rules prescribed by the Bureau under the Act, and (c) any other Federal law or regulation that the Bureau is authorized to enforce. The Rules do not apply to the issuance of temporary cease-and-desist proceedings pursuant to section 1053(c) of the Act, but the Bureau invites comments as to whether special rules governing such proceedings are necessary and, if so, what they should provide. The Rules are modeled on the uniform rules and procedures for administrative hearings (''Uniform Rules'') adopted by the prudential regulators pursuant to section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA''), 56 FR 38024 (Aug. 9, 1991);[2] the Federal Trade Commission's (''FTC'') Rules of Practice for Adjudicative Proceedings (''FTC Rules''), 16 CFR part 3; and the Security and Exchange Commission's (''SEC'') Rules of Practice (''SEC Rules''), 17 CFR part 201. The Bureau has also looked to the Model Adjudication Rules prepared by the Administrative Conference of the United States. *See* Michael P. Cox, The Model Adjudication Rules (MARs), 11 T.M. Cooley L. Rev. 75 (1994).

In drafting these Rules, the Bureau endeavored to create a process that simultaneously provides for expeditious resolution of claims and ensures that parties who appear before the Bureau receive a fair hearing. Notably, in the last several decades, both the SEC and the FTC revised their rules of practice relating to administrative proceedings to make the adjudicatory process more efficient. In 1990, the SEC created a task force ''to review the rules and procedures relating to [SEC] administrative proceedings, to identify sources of delay in those proceedings and to recommend steps to make the adjudicatory process more efficient and effective.'' 60 FR 32738, 32738 (June 23, 1995). The result was a comprehensive revision of the SEC Rules in 1995. *See id.* Similarly, when the FTC proposed revisions to its Rules of Practice for Adjudicative Proceedings in 2008, the FTC's Notice of Proposed Rulemaking stated: ''In particular, the [FTC's] Part 3 adjudicatory process has long been criticized as being too protracted * * * The [FTC] believes that these comprehensive proposed rule revisions would strike an appropriate balance between the need for fair process and quality decision-making, the desire for efficient and speedy resolution of matters, and the potential costs imposed on the Commission and the parties.'' 73 FR 58831, 58832–33 (Oct. 7, 2008). The Rules adopted herein are animated by the experiences of these agencies. Drawing from best practices of existing agency adjudication processes, these Rules look to learn from and improve upon other agencies' efforts to streamline their processes while protecting parties' rights to fair and impartial proceedings. The following discussion outlines some significant aspects of the Rules.

The Rules adopt a decision-making procedure that incorporates elements of the SEC Rules, FTC Rules, and Uniform Rules. The Rules implement a procedure, like that of the Uniform Rules, whereby a hearing officer will issue a recommended decision in each administrative adjudication. Like the FTC Rules, the Bureau's Rules provide any party the right to contest the recommended decision by filing a notice of appeal to the Director and perfecting the appeal by later filing an opening brief. In the event a party fails to timely file or perfect an appeal, the Director may either adopt the recommended decision as the Bureau's final decision or order further briefing with respect to any findings of fact or conclusions of law contained in the recommended decision. The Bureau believes this approach best balances the need for expeditious decision-making with protecting the parties' rights to ultimate consideration of a matter by the Director.

In keeping with this approach, the Rules also provide that the hearing

[1] The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, Public Law 111–203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.* Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes these Rules on behalf of the CFPB.

[2] For ease of reference, citations to the Uniform Rules herein are to the Uniform Rules as adopted by the Office of the Comptroller of the Currency, which are codified at 12 CFR part 19.

officer will decide dispositive motions in the first instance, subject to the same right of review provided for recommended decisions in the event that the ruling upon such a motion disposes of the case. The Bureau has adopted this model because it provides for the most expeditious resolution of matters while preserving all parties' rights to review by the Director.

The Rules set deadlines for both the recommended decision of the hearing officer and the final decision of the Director. The Bureau has adopted an approach, similar to that used by the SEC, wherein the hearing officer is permitted a specified period of time—300 days, beginning with service of the notice of charges—to issue a recommended decision. The Rules also require the hearing officer to convene a scheduling conference soon after the respondent files its answer to craft a schedule appropriate to the particular proceeding. This construct gives the hearing officer considerable discretion in conducting proceedings and the flexibility to respond to the nuances of individual matters while ensuring that each case concludes within a fixed number of days. The Rules do permit hearing officers to request an extension of the 300-day deadline, but the Bureau's intent is that such extensions will be requested of and granted by the Director only in rare circumstances.

The Rules for the timing of the Director's decision on appeal or review are guided by the language of section 1053 of the Act, 12 U.S.C. 5563. If a recommended decision is appealed to the Director, or the Director orders additional briefing regarding the recommended decision, the Rules provide that the Director must notify the parties that the case has been submitted for final Bureau decision at the expiration of the time permitted for filing reply briefs with the Director. The Director then must issue his or her final decision within 90 days of providing such notice to the parties. *See* 12 U.S.C. 5563(b)(3). In keeping with the goal of providing for the expeditious resolution of claims, the Rules also adopt the SEC's standard governing extensions of time, which makes it clear that such extensions are generally disfavored.

The Bureau has adopted the SEC's affirmative disclosure approach to fact discovery in administrative adjudications. *See generally* 17 CFR 201.230. Thus, the Rules provide that the Division of Enforcement will provide any party in an adjudication proceeding with an opportunity to inspect and copy certain categories of documents obtained by the Division of Enforcement from persons not employed by the Bureau, as that term is defined in the Rules, in connection with the investigation leading to the institution of the proceedings and certain categories of documents created by the Bureau, provided such material is not privileged or otherwise protected from disclosure. The Division of Enforcement's obligation under this rule relates only to documents obtained by the Division of Enforcement; documents located only in the files of other divisions or offices of the Bureau are beyond the scope of this rule. As set forth in greater detail in the section-by-section analysis below, the Bureau has modified the SEC rule slightly, by eliminating any reference to *Brady* v. *Maryland* while retaining an obligation to turn over material exculpatory information in the Division of Enforcement's possession, and by providing that nothing in the rule shall require the Division of Enforcement to provide reports of examination to parties to whom the reports do not relate.

The goal in adopting the SEC's approach in this regard is to ensure that respondents have access to all of the material facts underlying Enforcement Counsel's decision to commence enforcement proceedings and have a fair opportunity to prepare and present a defense, while eliminating much of the expense and delay often associated with pre-trial discovery in civil matters. Recognizing that administrative adjudications will take place after a Bureau investigation intended to gather relevant evidence, and in light of the affirmative obligation that the Rules place on Enforcement Counsel to provide access to materials gathered in the course of the investigation, the Rules do not provide for many other traditional forms of pre-trial discovery, such as interrogatories and depositions. The Rules do provide for the deposition of witnesses unavailable for trial, the use of subpoenas to compel the production of documentary or tangible evidence, and, in appropriate cases, expert discovery, thus ensuring that respondents have an adequate opportunity to marshal evidence in support of their defense. We believe this approach will promote the fair and speedy resolution of claims while ensuring that parties have access to the relevant information necessary to prepare a defense.

B. Section-by-Section Summary

Subpart A—General Rules

Section 1081.100 Scope of the Rules of Practice

This section sets forth the scope of the Rules and states that they apply to adjudication proceedings brought under section 1053 of the Act. Pursuant to the definition of the term ''*adjudication proceeding''* in § 103 of the Rules, the Rules do not apply to proceedings intended to lead to the formulation of a temporary cease-and-desist order pursuant to section 1053(c) of the Act, although they would apply to subsequent proceedings initiated by a notice of charges seeking a permanent cease-and-desist order or other relief. The Rules do not apply to Bureau investigations, rulemakings, or other proceedings.

Section 1081.101 Expedition and Fairness of Proceedings

This section, which is modeled on the FTC Rules, 16 CFR 3.1, sets forth the Bureau's policy to avoid delays in any stage of an adjudication proceeding while still ensuring fairness to all parties. It further permits the hearing officer or the Director to shorten time periods set by the Rules, provided that the parties consent to shortened time periods. This authority could be used in proceedings where expedited hearings would serve the public interest or where the issues do not require expert discovery or extended evidentiary hearings.

Section 1081.102 Rules of Construction

This section, drawn from the Uniform Rules, 12 CFR 19.2, makes clear that the use of any term in the Rules includes either its singular or plural form, as appropriate, and that the use of the masculine, feminine, or neuter gender shall, if appropriate, be read to encompass all three. This section also explicitly states that, unless otherwise indicated, any action required to be taken by a party to a proceeding may be taken by the party's counsel. Finally, this section provides that terms not otherwise defined by § 103 should be defined in accordance with the Act.

Section 1081.103 Definitions

This section sets forth definitions of certain terms used in the Rules. It defines ''*adjudication proceeding''* to include any proceeding conducted pursuant to section 1053 of the Act, except for proceedings to obtain a temporary cease-and-desist order pursuant to section 1053(c). The Bureau intends for the term ''*counsel''* to

include any individual representing a party, including, as appropriate, an individual representing himself or herself. The term ''*Director''* has been defined to include the Director, as well as any person authorized to perform the functions of the Director in accordance with the law. This is intended to allow the Deputy Director or Acting Director, or a delegee of the Director, as appropriate, to perform the functions of the Director. It is also intended to allow the Secretary of the Treasury to perform certain functions of the Director in accordance with section 1066 of the Act. The term ''*person employed by the Bureau''* is defined to include Bureau employees and contractors as well as others working under the direction of Bureau personnel, and is intended to encompass, among other things, consulting experts.

Section 1081.104 Authority of the Hearing Officer

This section enumerates powers granted to the hearing officer subsequent to appointment. The list of powers in paragraph (b) is not intended to be exhaustive. The hearing officer is permitted to take any other action necessary and appropriate to discharge the duties of a presiding officer. All powers granted by this provision are intended to further the Bureau's goal of an expeditious, fair, and impartial hearing process. The powers set forth in this section are generally drawn from the Administrative Procedure Act (''APA''), 5 U.S.C. 556, 557, and are similar to the powers granted to hearing officers and administrative law judges under the Uniform Rules, the SEC Rules, and the FTC Rules.

This section provides the hearing officer with the explicit authority to issue sanctions against parties or their counsel as may be necessary to deter sanctionable conduct, provided that any person to be sanctioned first has an opportunity to show cause as to why no sanction should issue. The Bureau believes such authority is included within the hearing officer's authority to regulate the course of the hearing, 5 U.S.C. 556(c)(5), but considers it appropriate to explicitly authorize the exercise of such authority in the Rules. The Bureau notes that the MARs provide adjudicators with the authority ''to impose appropriate sanctions against any party or person failing to obey his/her order, refusing to adhere to reasonable standards of orderly and ethical conduct, or refusing to act in good faith.'' *See* MARs, 11 T. M. Cooley L. Rev. at 83.

Section 1081.105 Assignment, Substitution, Performance, Disqualification of Hearing Officer

This section is modeled on the FTC and the SEC Rules setting forth the process for assigning hearing officers in the event that more than one hearing officer is available to the Bureau. *See* 16 CFR 3.42(b), (e); 17 CFR 201.110, 201.112, 201.120. Consistent with 5 U.S.C. 3105, hearing officers will be ''assigned to cases in rotation so far as practicable.'' This section also sets forth the process by which hearing officers may be disqualified from presiding over an adjudication proceeding. Section 556(b) of the APA, 5 U.S.C. 556(b), provides that a hearing officer may disqualify himself or herself at any time. The standard for making a motion to disqualify requires that the movant have a reasonable, good faith basis for the motion. This standard is intended to emphasize that there must be objective reasons to seek a disqualification, not just a subjective, though sincerely held, belief. If a hearing officer does not withdraw in response to a motion for withdrawal, the motion is certified to the Director for his or her review in accordance with the Rules' interlocutory review provision. Finally, this section provides the procedure for reassignment of a proceeding in the event a hearing officer becomes unavailable.

Section 1081.106 Deadlines

This section provides that deadlines for action by the hearing officer established by the Rules do not confer any substantive rights on respondents. The SEC Rules, 17 CFR 201.360(a)(2), contain similar language regarding the timelines set out for certain hearing officer actions in SEC proceedings.

Section 1081.107 Appearance and Practice in Adjudication Proceedings

This section is largely based on the Uniform Rules, 12 CFR 19.6, and sets forth the criteria for persons acting in a representative capacity for parties in adjudication proceedings. A notice of appearance is required to be filed by an individual representing any party, including an individual representing the Bureau, simultaneously with or before the submission of papers or other act of representation on behalf of a party. Any counsel filing a notice of appearance is deemed to represent that he or she agrees and is authorized to accept service on behalf of the represented party. The section also sets forth the standards of conduct expected of attorneys and others practicing before the Bureau. It provides that counsel may be excluded or suspended from proceedings, or disbarred from practicing before the Bureau, for engaging in sanctionable conduct during any phase of the adjudication proceeding.

Section 1081.108 Good Faith Certification

This section is based on the Uniform Rules, 12 CFR 19.7, and requires that all filings and submissions be signed by at least one counsel of record, or the party if appearing on his or her own behalf. This section provides that, by signing a filing or submission, the counsel or party certifies and attests that the document has been read by the signer, and, to the best of his or her knowledge, is well grounded in fact and is supported by existing law or a good faith argument for the extension or modification of the existing law. In addition, the certification attests that the filing or submission is not for purposes of unnecessary delay or any improper purpose. Oral motions or arguments are also subject to the good faith certification: the act of making the oral motion or argument constitutes the required certification. Finally, this section makes clear that a violation of the good faith certification requirement would be grounds for sanctions under § 104(b)(13). This section, which also mirrors the requirements of Federal Rule of Civil Procedure 11, is intended to ensure that parties and their counsel are not abusing the administrative process by making filings that are factually or legally unfounded or intended simply to delay or obstruct the proceeding.

Section 1081.109 Conflict of Interest

In general, conflicts of interest in representing parties to adjudication proceedings are prohibited by the Rules. The hearing officer is empowered to take corrective steps to eliminate such conflicts. If counsel represents more than one party to a proceeding, counsel is required to file at the time he or she files his or her notice of appearance a certification that: (1) The potential for possible conflicts of interest has been fully discussed with each such party; and (2) the parties individually waive any right to assert any conflicts of interest during the proceeding. This approach is based upon the Uniform Rules, 12 CFR 19.8, which itself was based upon the Model Code of Conduct for attorneys and the District of Columbia Ethics Rule. *See* 56 FR 27790, 27793 (June 17, 1991).

Section 1081.110 Ex Parte Communication

This section implements the APA's prohibition on ex parte communications. *See* 5 U.S.C. 554(d)(1), 557(d)(1). Paragraphs (a)(1), (a)(2), and (b) are based on the Uniform Rules, 12 CFR 19.9(a), (b), and prohibit an ex parte communication relevant to the merits of an adjudication proceeding between a person not employed by the Bureau and the Director, hearing officer, or any decisional employee during the pendency of an adjudication proceeding. Paragraph (a)(3) defines the term ''pendency of an adjudication proceeding,'' and provides that if the person responsible for the communication has knowledge that a notice of charges will or is likely to be issued, the pendency of an adjudication shall be deemed to have commenced at the time of his or her acquisition of such knowledge. This provision implements 5 U.S.C. 557(d)(1)(E).

Consistent with the MARs and the practice of other agencies, communications regarding the status of the proceeding are expressly excluded from the definition of ex parte communications. *See* MARs, 11 T.M. Cooley L. Rev. at 87; 12 CFR 19.9(a)(2); 16 CFR 4.7(a). If an ex parte communication does occur, the document itself, or if oral, a memorandum of the substance of the communication must be placed in the record. All other parties to the proceeding may have the opportunity to respond to the prohibited communication, and such response may include a recommendation for sanctions. The hearing officer or the Director, as appropriate, may determine whether sanctions are appropriate.

Finally, paragraph (e) of this section provides that the hearing officer is not permitted to consult an interested person or a party on any matter relevant to the merits of the adjudication, except to the extent required for the disposition of ex parte matters. Consistent with 5 U.S.C. 554(d), this paragraph also provides that Bureau employees engaged in an investigational or prosecutorial function, other than the Director, may not participate in the decision-making function in the same or a factually related matter.

Section 1081.111 Filing of Papers

This section requires the filing of papers in an adjudication proceeding. It specifies the papers that must be filed and addresses the time and manner of filing. The section provides for filing by electronic transmission upon the conditions specified by the Director or the hearing officer, recognizing that while the Bureau anticipates the development of an electronic filing system, it may adopt other means of electronic filing in the interim (e.g., e-mail transmission). The section authorizes other methods of filing if a respondent demonstrates that filing via electronic transmission is not practical.

Section 1081.112 Formal Requirements as to Papers Filed

This section sets forth the formal requirements for papers filed in adjudication proceedings. It sets forth formatting requirements, requires that all documents be signed in accordance with § 108, and requires the redaction of sensitive personal information from filings where the filing party determines that such information is not relevant or otherwise necessary for the conduct of the proceeding. This section also sets forth the method of filing documents containing information for which confidential treatment has been granted or is sought, and requires that in addition to the filing of the confidential information under seal, an expurgated copy of the filing be made on the public record. Section 119 governs the filing of motions seeking confidential treatment of information and sets forth the standard to be applied by the hearing officer in determining whether to grant such treatment.

Section 1081.113 Service of Papers

This section requires that every paper filed in a proceeding be served on all other parties to the proceeding in the manner set forth in the rule. Service by electronic transmission is encouraged, but is conditioned upon the consent of the parties. The section also sets forth specific methods for the Bureau to serve notices of charges, as well as recommended decisions and final orders. In this regard, the section provides that such service cannot be made by First Class mail, but also provides that service may be made on authorized agents for service of process.

The section also provides that the Bureau may serve persons at the most recent business address provided to the Bureau in connection with a person's registration with the Bureau. Although no such registration requirements currently exist, the Bureau has included this provision to account for any such requirements in the future. In the event that a party is required to register with the Bureau and maintain the accuracy of such registration information, the Bureau should be entitled to rely upon such information for service of process. This provision is modeled on the SEC Rules, 17 CFR 201.141(a)(2)(iii).

Section 1081.114 Construction of Time Limits

This section provides common rules for computing time limits, taking into account the effect of weekends and holidays on time periods that are 10 days or less. This section also sets forth when filing or service is effective. With regard to time limits for responsive pleadings or papers, the Rules incorporate a three-day extension for mail service, similar to the Federal Rules of Civil Procedure, and a one-day extension for overnight delivery, as contained in some agencies' existing rules. A one-day extension for service by electronic transmission is consistent with the Uniform Rules and reflects that electronic transmission may result in delays in actual receipt by the person served.

Section 1081.115 Change of Time Limits

This section is modeled on the SEC Rules, 17 CFR 201.161, and is intended to limit extensions of time to those necessary to prevent substantial prejudice. The section is intended to further the Bureau's goal of ensuring the timely conclusion of adjudication proceedings. The section generally provides the hearing officer and the Director with the authority to extend the time limits prescribed by the Rules in certain defined circumstances. In keeping with the goal of expeditious resolution of proceedings, this section provides that motions for extension of time are strongly disfavored and may only be granted after consideration of various enumerated factors, provided that the requesting party makes a strong showing that denial of the motion would substantially prejudice its case. The section also provides that any extension of time shall not exceed 21 days unless the hearing officer or Director, as appropriate, states on the record or in a written order the reasons why a longer extension of time is necessary. Finally, the section provides that the granting of a motion for an extension of time does not affect the deadline for the recommended decision of the hearing officer, which must be filed no later than the earlier of 300 days after the filing of the notice or charges or 90 days after the end of post-hearing briefing (unless separately extended by the Director as provided for in § 400).

Section 1081.116 Witness Fees and Expenses

This section provides that fees and expenses for non-party witnesses subpoenaed pursuant to these Rules

shall be the same as for witnesses in United States district courts.

Section 1081.117 Bureau's Right To Conduct Examination, Collect Information

This section, which is modeled on the Uniform Rules, 12 CFR 19.16, states that nothing contained in the Rules shall be construed to limit the right of the Bureau to conduct examinations or visitations of any person, or the right of the Bureau to conduct any form of investigation authorized by law, or to take other actions the Bureau is authorized to take outside the context of conducting adjudication proceedings. This section is intended to clarify that the pendency of an adjudication proceeding with respect to a person shall not affect the Bureau's authority to exercise any of its powers with respect to that person.

Section 1081.118 Collateral Attacks on Adjudication Proceedings

This section, which is modeled on the Uniform Rules, 12 CFR 19.17, is intended to preclude the use of collateral attacks to circumvent or delay the administrative process.

Section 1081.119 Confidential Information; Protective Orders

This section sets forth the means by which a party or another person may seek a protective order shielding confidential information. While generally modeled on the SEC Rules, 17 CFR 201.322, the section adopts the substantive standard set forth in the FTC Rules, 16 CFR 3.45(b), which provides that the hearing officer may grant a protective order only upon a finding that public disclosure will likely result in a clearly defined, serious injury to the person requesting confidential treatment or after finding that the material constitutes sensitive personal information. The Rule adopts the FTC's standard because it comports with the Bureau's goals of providing as much transparency in the adjudicative process as possible, while also protecting confidential business information or other sensitive information of parties appearing before the Bureau or third parties whose information may be introduced into evidence. The Bureau expects that the standard set forth in this section will be met in cases where the disclosure of trade secrets or other information to the public or to parties is likely to result in harm, but that the standard will not be met simply because the information at issue is deemed ''confidential'' or ''proprietary'' by the movant. To the extent that a movant can identify a clearly defined, serious injury likely to result from the disclosure of such particular information, it will be protected; generalized claims of competitive or other injury generally will not suffice. This section provides that documents subject to a motion for confidential treatment will be maintained under seal until the motion is decided.

Section 1081.120 Settlement

This section is based on the SEC Rules, 17 CFR 201.240. It addresses offers of settlement made both prior to and after the institution of proceedings. Any person who is notified that a proceeding may or will be instituted against him or her, or any party to a proceeding, may make an offer of settlement in writing at any time. Any settlement offer shall be presented to the Director with a recommendation, except that, if the recommendation is unfavorable, the offer shall not be presented to the Director unless the person making the offer so requests.

The section requires that each offer of settlement recite or incorporate as part of the offer the provisions of paragraphs (c)(3) and (c)(4). Because certain facts necessary for the Director to make a reasoned judgment as to whether a particular settlement offer is in the public interest will often be available only to the Bureau employee that negotiated the proposed settlement, paragraph (c)(4)(i) requires waiver of any provisions, under the Rules or otherwise, that may be construed to prohibit ex parte communications regarding the settlement offer between the Director and Bureau employee involved in litigating the proceeding. Paragraph (c)(4)(ii) requires waiver of any right to claim bias or prejudgment by the Director arising from the Director's consideration or discussions concerning settlement of all or any part of the proceeding. If the Director rejects the offer of settlement, the person making the offer shall be notified of the Director's action. The rejection of the offer of settlement shall not affect the continued validity of the waivers pursuant to paragraph (c)(4).

Section 1081.121 Cooperation With Other Agencies

This section sets forth the policy of the Bureau to cooperate with other governmental agencies to avoid unnecessary overlapping or duplication of regulatory functions.

Subpart B—Initiation of Proceedings and Prehearing Rules

Section 1081.200 Commencement of Proceedings and Contents of Notice of Charges

This section, similar to the comparable Uniform Rule, 12 CFR 19.18, contains the requirements relating to the initiation of adjudication proceedings, including the required content of a notice of charges initiating a hearing. In provisions modeled on the MARs and the Federal Rules of Civil Procedure, *see* MARs, 11 T.M. Cooley L. Rev. at 96; Fed. R. Civ. P. 41(a), this section also sets forth the circumstances under which the Bureau may voluntarily dismiss an adjudication proceeding, either on its own motion before the respondent(s) serve an answer, or by filing a stipulation of dismissal signed by all parties who have appeared. Unless the notice or stipulation of dismissal states otherwise, a dismissal pursuant to this section is without prejudice. In keeping with the principle that Bureau proceedings are presumed to be public, this section also provides that a notice of charges shall be released to the public after affording the respondent or others an opportunity to seek a protective order to shield confidential information.

Section 1081.201 Answer

This section requires a respondent to file an answer in all cases. The Bureau considered, but rejected, the approach set forth in the SEC Rules, 17 CFR 201.220(a), whereby an answer is required only if specified in the notice of charges. The Bureau believes that an answer can help focus and narrow the matters at issue. Respondents must file an answer within 14 days of service of the notice of charges. The 14-day time period is adopted from the FTC Rules, 16 CFR 3.12. As in the Uniform Rules, 12 CFR 19.19(c), failure to file a timely answer is deemed to be a waiver of the right to appear and a consent to the entry of an order granting the relief sought by the Bureau in the notice of charges. This section provides that in the case of default, the hearing officer is authorized, without further proceedings, to find the facts to be as alleged in the notice of charges and to enter a recommended decision containing appropriate findings and conclusions.

This section adopts the procedure from the SEC Rules for a motion to set aside a default, 17 CFR 201.155. It also provides that the hearing officer, prior to the filing of the recommended decision, or the Director, at any time, may set aside a default for good cause shown.

Section 1081.202 Amended Pleadings

This section provides that the parties may amend the notice of charges or the answer at any stage of the proceeding. Formal amendments to the notice of charges and answer are not required when an issue not raised by the notice of charges or answer is tried at the hearing by express or implied consent of the parties. In the event that a party seeks to introduce evidence at a hearing that is outside the scope of matters raised in the notice of charges or answer, the hearing officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action unless the objecting party demonstrates that admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The Bureau has adopted this liberal standard to the amendment of the pleadings to promote adjudication on the merits, and believes that the standard set forth in the rule should adequately protect parties from undue prejudice.

Section 1081.203 Scheduling Conference

This section requires the parties to meet before the initial scheduling conference to discuss the nature and basis of their claims and defenses, the possibilities for a prompt settlement or resolution of the case, and other matters to be determined at the scheduling conference.

Within 20 days of the service of the notice of charges, or at another time if the parties agree, the hearing officer and the parties are to have a scheduling conference. This section sets forth the issues to be discussed at the scheduling conference. These issues are drawn from those the parties are required to discuss at scheduling and prehearing conferences under the Uniform Rules, 12 CFR 19.31, the SEC Rules, 17 CFR 201.221, and the FTC Rules, 16 CFR 3.21. Paragraph (b)(1) provides that the parties shall be prepared to address the determination of hearing dates and location, and whether, in proceedings under section 1053(b) of the Act, the hearing should commence later than 60 days after service of the notice of charges. This provision was added to account for the requirement in section 1053(b) of the Act that the hearing be held no earlier than 30 days nor later than 60 days after the date of service of the notice of charges, unless an earlier or later date is set by the Bureau at the request of any party so served. It is expected that the parties shall discuss a hearing date at the scheduling conference, and that this would afford respondents the opportunity to request a hearing date outside the 30-to-60 day timeframe.

It is also expected that at or before the scheduling conference, the parties will discuss any issues related to the production of documents pursuant to § 206, any anticipated motions for witness statements pursuant to § 207, whether either party intends to issue documentary subpoenas, and whether either party believes that depositions will be necessary to preserve the testimony of witnesses who will be unavailable for the hearing. The parties are also expected to discuss the need and a schedule for any expert discovery.

The hearing officer is required to issue a scheduling order at or within five days of the conclusion of the scheduling hearing, setting forth the date and location of the hearing, as well as other procedural determinations made. It is expected that the hearing officer will establish any dates for expert discovery in the scheduling order, or else expressly find that such discovery is not necessary or reasonable in a particular case. This scheduling order will govern the course of the proceedings, unless later modified by the hearing officer.

Provision for a prompt scheduling conference followed by prompt issuance of a scheduling order is necessary in order to allow for the orderly course of proceedings on the timeline set forth elsewhere in the Rules. Particularly in cases brought pursuant to section 1053(b) of the Act in which the respondent does not request a hearing date outside the 30-to-60 day timeframe set forth in the statute, it is essential that the hearing officer and the parties have a clear understanding of the applicable schedule at the earliest possible date.

As provided for in the SEC Rules, 17 CFR 201.221(f), this section provides that any person named as a respondent in a notice of charges who fails to appear at a scheduling conference may be deemed in default pursuant to § 201(d)(1). Finally, like the FTC Rules, 16 CFR 3.21(g), this section provides that scheduling conferences are presumptively public unless the hearing officer determines otherwise based on the standard set forth in § 119.

Section 1081.204 Consolidation and Severance of Actions

This section, modeled after the Uniform Rules, 12 CFR 19.22, allows the consolidation of actions if the proceedings arise out of the same transaction, occurrence, or series of transactions or occurrences or if the proceedings involve at least one common respondent or a material common question of law or fact. Proceedings are not to be consolidated if to do so would unreasonably delay the proceeding or cause significant injustice.

Severance, on the other hand, may be granted by the hearing officer only if he or she determines that undue prejudice or injustice would result from a consolidated proceeding and if such prejudice or injustice would outweigh the interests of judicial economy and speed in the adjudication of actions. This is a higher standard than is required for the consolidation of actions.

Section 1081.205 Non-Dispositive Motions

This section governs all motions other than motions to dismiss or motions for summary disposition, which are governed by § 212. The section generally sets forth the requirements for filing a non-dispositive motion, and requires that all such motions must be in writing, state with particularity the relief sought, and include a proposed order. This section also makes clear that motions filed pursuant to sections that impose different requirements should follow those requirements, and the requirements of § 205 to the extent they are not inconsistent. For example, § 208(g), which relates to motions to quash subpoenas, provides for a shorter time period for the filing of a responsive brief and prohibits the filing of a reply unless requested by the hearing officer. These conditions govern motions to quash, but such motions are still subject to other provisions of § 205, including, *inter alia,* the need to meet and confer, deadlines for the hearing officer's ruling, and length limitations of the briefs.

Like the Uniform Rules and the FTC Rules, 12 CFR 19.23(d)(1); 16 CFR 3.22(d), this section gives a party 10 days after service of a non-dispositive motion to respond to such motion in writing. It provides for reply briefs, which must be filed within three days after service of the response. A party's failure to respond to a motion shall waive that party's right to oppose such motion and constitutes consent to the entry of an order substantially in the form of the order accompanying that motion. This section adopts the SEC's 15-page length limitation for non-dispositive motions and oppositions, 17 CFR 201.154(c), and a six page length limitation for reply briefs. The Bureau has adopted these time and length limitations because they provide parties ample opportunity to express their views on matters that do not concern the ultimate disposition of the action.

The section also requires parties to make a good faith effort to meet and confer prior to the filing of a non-dispositive motion in an effort to resolve the controversy by agreement. The Bureau has included the meet-and-confer requirement because it believes that such conferences can help obviate the need for, or narrow the scope of, disputed motions, thus saving both the parties and the hearing officer time and resources.

This section provides that the hearing officer shall rule on a non-dispositive motion, and shall do so within 14 days after the expiration of the time for filing of all motions papers authorized by this section, and that the pendency of a motion shall not stay proceedings. This time limitation is based on the FTC Rules, 16 CFR 3.22(e), and is intended to ensure the timely resolution of disputes so that the proceeding as a whole can conclude in a fair and expeditious manner. As noted above, both the FTC and the SEC have revised their rules of practice to provide for the more expeditious resolution of administrative adjudications, and the incorporation of a time period in which the hearing officer must rule on a non-dispositive motion is, in the views of the Bureau, a critical part of that effort. *See* 73 FR 58831, 58836 (Oct. 7, 2008) (FTC expects that provision requiring ALJs to decide motions within 14 days will expedite cases).

Section 1081.206 Availability of Documents for Inspection and Copying

Modeled primarily after the SEC Rules, 17 CFR 201.230, this section adopts the SEC's affirmative disclosure approach to fact discovery in administrative adjudications. Generally, this section requires that the Division of Enforcement make available for inspection and copying certain categories of documents obtained by the Division of Enforcement prior to the institution of proceedings from persons not employed by the Bureau, in connection with the investigation leading to the institution of proceedings.

The Bureau believes that this section will promote the fair and efficient resolution of administrative proceedings. A respondent's right to inspect and copy documents under this section is automatic; the respondent does not need to make a formal request for access through the hearing officer. Pursuant to this section, the Division of Enforcement will turn over information from its investigatory file that was obtained from persons not employed by the Bureau as part of the investigation resulting in the Bureau's decision to institute proceedings. The respondent will have access to the documents, testimony, and other information that the Bureau relied upon in determining to file a notice of charges, in addition to evidence that the Bureau will rely upon at the hearing.

This approach has several advantages. By automatically providing respondents with the factual information gathered by the Division of Enforcement in the course of the investigation leading to the institution of proceedings, this provision helps ensure that respondents have a complete understanding of the basis for the Bureau's action and can more accurately and efficiently determine the nature of their defenses or whether they wish to seek settlement. Because this approach renders traditional document discovery largely unnecessary, it will lead to a faster and more efficient resolution of Bureau administrative proceedings, saving both the Bureau and respondents the resources typically expended in the civil discovery process.

The section adopts most of the procedures and conditions set forth in the SEC Rules, as discussed below.

Pursuant to paragraph (a)(1), the Division of Enforcement's obligation under this section relates to documents obtained by the Division of Enforcement. Documents located only in the files of other divisions or offices are beyond the scope of the rule. The term ''documents'' has been defined in the same manner as the term ''documentary material'' in section 1051(4) of the Act, and encompasses, among other things, electronic files or other data or data compilations stored in any medium.

Paragraph (a)(1) also provides that the Division of Enforcement will make the documents available for inspection and copying. This provision is modeled after the SEC Rules and the Federal Rules of Civil Procedure. The Bureau anticipates that in most cases it will simply provide either paper or electronic copies of the material at issue to respondents, but has adopted the formulation in the rule to preserve flexibility and the Division of Enforcement's right to require inspection and copying in appropriate cases.

Paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) describe the types of documents that are subject to the disclosure requirement of paragraph (a)(1). Paragraph (a)(2) provides that the Division of Enforcement shall also make available each civil investigative demand or other written request to provide documents or to be interviewed issued by the Division of Enforcement in connection with the investigation leading to the institution of proceedings. The Division of Enforcement shall also make available any final examination or inspection reports prepared by any other Division of the Bureau if the Division of Enforcement either intends to introduce any such report into evidence or to use any such report to refresh the recollection of, or impeach, any witness. The provisions of paragraph (a)(2) are included in the SEC Rules, but have been broken out into a separate paragraph of this section because they do not comprise documents that the Division of Enforcement obtained from persons not employed by the Bureau, and thus do not technically fall within the scope of paragraph (a)(1).

Pursuant to § 1081.208, a respondent may seek production of other documents pursuant to subpoena. Paragraph (a)(3) is intended to make clear that the affirmative disclosure obligation set forth in paragraphs (a)(1) and (a)(2) does not preclude the availability of subpoenas as separately provided by the Rules.

Paragraph (a)(4) provides that this section does not require the Division of Enforcement to produce a final examination or inspection report prepared by any other Division of the Bureau to a respondent who is not the subject of that report. The Bureau has added this provision, which does not appear in the SEC Rules, out of concern for the privileged and confidential nature of examination and inspection reports and to make clear that respondents cannot rely upon the Bureau's affirmative disclosure obligation to require the production of supervision or examination reports concerning other persons. Although the disclosure obligation as drafted would not require the production of such reports, the Bureau is adding this provision to remove any question regarding the issue.

Paragraph (b)(1) of this section permits the Division of Enforcement to withhold documents that would otherwise be produced under paragraph (a) under five exceptions. Exception (i) shields information subject to a claim of privilege. Exception (ii) protects as work product internal documents prepared by persons employed by the Bureau, including consulting experts, which will not be offered in evidence. Work product includes any notes, working papers, memoranda or other similar materials, prepared by an attorney or under an attorney's direction in anticipation of litigation. *See Hickman* v. *Taylor,* 329 U.S. 495 (1947); see also Fed. R. Civ. P. 26(b)(3) and (b)(5). Accountants, paralegals, investigators, and consulting experts who work on an

investigation do so at the direction of the Director, an associate director, or another supervisory attorney, and their work product is therefore shielded by the rule. Although such material would not fall within the purview of paragraphs (a)(1) and (a)(2), the Bureau has retained this provision of the SEC Rule to make clear that such work product is not subject to the affirmative disclosure obligation. An examination or inspection report prepared by one of the Bureau's Supervision Divisions, which the Division of Enforcement intends to introduce into evidence or to use to refresh the recollection of, or impeach, a witness, is explicitly excluded from the materials that may be withheld pursuant to this exception.

Exception (iii) protects the identity of a confidential source. *See* 5 U.S.C. 552(b)(7)(C) and (D). Exception (iv) provides that documents need not be produced where applicable law prohibits their production. Exception (v) protects any other document or category of documents that the hearing officer determines may be withheld as not relevant to the subject matter of the proceeding, or otherwise for good cause shown. This exception is intended to provide the hearing officer with the flexibility to adjust the Bureau's affirmative disclosure obligation to the particular contours of a proceeding. For example, this exception could be used in a situation where a single investigation involves a discrete segment or segments that are related only indirectly, or not at all, to the recommendations ultimately made to the Director with respect to the particular respondents in a specific proceeding. To require that documents not relevant to the subject matter of the proceeding be made available, simply because they were obtained as part of a broad investigation, burdens the respondent as well as the Division of Enforcement with unnecessary costs and delay.

Paragraph (b)(2) of this section provides that paragraph (b) does not authorize the Division of Enforcement to withhold material exculpatory evidence in the possession of the Division of Enforcement that would otherwise be subject to disclosure pursuant to paragraph (a). Pursuant to this section, the Division of Enforcement will provide respondents with material exculpatory evidence it has obtained from persons not employed by the Bureau even if such evidence is contained in documents that the Division of Enforcement is otherwise permitted to withhold pursuant to paragraph (b)(1).

The Bureau has declined to adopt the SEC Rules' explicit reference to *Brady* v. *Maryland,* 373 U.S. 83 (1963) in this context. Proceedings under this part are civil in nature, not criminal, and the requirements of *Brady* are therefore inapplicable. The Division of Enforcement will turn over information from its investigatory file that was obtained from persons not employed by the Bureau as part of the investigation resulting in the Bureau's decision to institute proceedings, including any material exculpatory evidence so obtained. The Bureau understands this approach to be consistent with that provided for in the SEC Rules.

The Bureau has also added the clause ''that would otherwise be required to be produced pursuant to paragraph (a) of this section'' to paragraph (b) to make clear that the material exculpatory evidence provision works in concert with paragraph (a), and does not impose a separate, free-standing obligation to disclose exculpatory evidence that is not otherwise within the scope of paragraph (a).

Paragraph (c) provides that the hearing officer may require the Division of Enforcement to submit a withheld document list, and may order that a withheld document be made available for inspection and copying.

Pursuant to paragraph (d), the Division of Enforcement is required to make the material governed by this section available for inspection and copying no later than seven days after service of the notice of charges. The Bureau has considered requiring production of the covered material at the time the notice of charges is served, but has decided against such an approach. A provision for a delay of no more than seven days will allow for the entry of any appropriate protective orders and is consistent with the SEC's approach in this regard. *See* 17 CFR 201.230(d). It is the Bureau's expectation that the Division of Enforcement will make this material available as soon as possible in every case.

Paragraphs (e) and (f) set forth the procedure to obtain copies of documents and the costs of such copies. As noted above, the Bureau anticipates providing electronic copies of the documents to respondents in most cases, and paragraph (f) accounts for such a provision of electronic documents. In order to preserve the discretion of the Division of Enforcement, however, this paragraph includes provisions governing the inspection and copying of documents. In order to provide for the safekeeping of documents subject to inspection, and to control costs associated with the implementation of this section, paragraph (e) provides that documents shall be made available for inspection and copying at the Bureau office where they are ordinarily maintained, or at such other place as the parties may agree. In cases in which electronic production is unwarranted, this process appears more likely to result in prompt access to documents obtained by the Division of Enforcement that are the basis of the allegations contained in the notice of charges.

In a provision added by the Bureau, paragraph (g) of this section imposes upon the Division of Enforcement a duty to supplement its disclosures under paragraph (a)(1) of this section if it acquires information after making its disclosures that it intends to rely upon at a hearing.

Like the SEC Rules, 17 CFR 201.230(h), paragraph (h) provides for a ''harmless error'' standard in the event the Division of Enforcement fails to make available to a respondent a document required to be made available by this section.

Finally, paragraph (i) is modeled on the FTC Rules, 16 CFR 3.31(g), and provides a ''claw back'' mechanism whereby inadvertent disclosure of privileged or protected information or communications shall not constitute a waiver of the privilege or protection, provided that the party took reasonable steps to prevent disclosure and promptly took reasonable steps to rectify the error. Furthermore, paragraph (i) provides that disclosure of privileged or protected information or communications shall waive the privilege only if the waiver was intentional and that the scope of such waiver is limited to the undisclosed information or communications concerning the same subject matter, which in fairness ought to be considered together with the disclosed information or communications. Paragraph (i) expressly applies to disclosures made by any party during an adjudication proceeding.

Section 1081.207 Production of Witness Statements

Modeled after the SEC Rules, 17 CFR 201.231, this section provides that a respondent may request for inspection and copying any statement of a Division of Enforcement witness that (1) pertains to or is expected to pertain to his or her direct testimony; and (2) would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500, if the adjudication proceeding were a criminal proceeding. This section is intended to promote the principles of transparency

and efficiency discussed with respect to § 1081.206. Note, however, that the respondent is required to move for the production of these statements.

The Jencks Act does not require production of a witness' prior statement until the witness takes the stand. The Bureau expects that in most cases, the Division of Enforcement will provide prehearing production voluntarily. Submission of a witness' prior statement, however, may provide a motive for intimidation of that witness or improper contact by a respondent with the witness. The rule provides, therefore, that the time for delivery of witness statements is to be determined by the hearing officer, so that a case-specific determination of such risks can be made if necessary. Upon a showing that there is substantial risk of improper use of a witness' prior statement, the hearing officer may take appropriate steps. For example, a hearing officer may delay production of a prior statement, or prohibit parties from communicating with particular witnesses.

Like § 1081.206 and the SEC Rules, this section provides for a ''harmless error'' standard in the event the Division of Enforcement fails to make available a statement required to be made available by this section.

Section 1081.208 Subpoenas

This section is modeled after the SEC Rules, 17 CFR 201.232, and provides that, in connection with a hearing, a party may request the issuance of a subpoena for the attendance and testimony of a witness or the production of documents. The availability of subpoenas for witnesses and documents ensures that respondents have available to them the necessary tools to adduce evidence in support of their defenses. A subpoena may only be issued by the hearing officer (as opposed to counsel) and the section sets forth procedures to prevent the issuance of subpoenas that may be unreasonable, oppressive, excessive in scope, or unduly burdensome. The section also sets forth procedures and standards applicable to a motion to quash or modify a subpoena.

Paragraph (h) of this section also provides that, if a subpoenaed person fails to comply, the Bureau, on its own motion or on the motion of the party at whose request the subpoena was issued, may seek an order requiring compliance. In accordance with section 1052(b)(2) of the Act, which authorizes the Bureau or a Bureau investigator to seek enforcement of a subpoena, paragraph (h) only authorizes the Bureau—and not the party at whose request the subpoena was issued—to seek judicial enforcement of the subpoena. *Compare* 12 CFR 19.26(c) (authorizing the ''subpoenaing party or any other aggrieved party'' to seek judicial enforcement). In a provision added by the Bureau, this section also provides that failure to request that the Bureau seek enforcement of a subpoena constitutes waiver of any claim of prejudice predicated upon the unavailability of the testimony or evidence sought. This provision was added to prevent a respondent from declining to request that the Bureau seek to enforce the subpoena of a witness who fails to comply, and later claiming that his or her defense was prejudiced based upon the unavailability of that witness.

Section 1081.209 Deposition of Witness Unavailable for Hearing

This section, generally modeled after the Uniform Rules and the SEC Rules, 12 CFR 19.27; 17 CFR 201.233, provides that parties may seek to depose material witnesses unavailable for the hearing upon application to the hearing officer for a deposition subpoena. The application must state that the witness is expected to be unavailable due to age, illness, infirmity or other reason and that the petitioning party was not the cause of the witness's unavailability. The Bureau has adopted the Uniform Rules' formulation of this standard, which provides for such depositions when the witness is ''otherwise unavailable,'' to account for the possible unavailability of witnesses for reasons other than those specified in the SEC Rules.

Paragraph (a)(2) requires a party seeking to record a deposition by audio-visual means to so note in the request for a deposition subpoena. This provision is modeled on Federal Rule of Civil Procedure 30(b)(3). Paragraph (a)(4) also provides that a deposition cannot be taken on less than 14 days' notice to the witness and all parties, absent an order to the contrary from the hearing officer.

Paragraph (h) incorporates several provisions from the SEC Rules. It provides that the witness being deposed may have an attorney present during the deposition; that objections to questions of evidence shall be noted by the deposition officer, but that only the hearing officer shall have the power to decide on the competency, materiality, or relevance of evidence; that the deposition shall be filed with the Executive Secretary; and that transcripts shall be available to the deponent and each party for purchase.

This section also incorporates certain procedures from § 208 of the Rules pertaining to subpoenas. Those procedures are intended to protect against deposition requests that may be unreasonable, oppressive, excessive in scope, or unduly burdensome, and to provide a mechanism for signing and service of a deposition subpoena, the filing of a motion to quash, and for enforcing subpoenas.

The Bureau considered whether respondents should be allowed to issue subpoenas for the purpose of compelling prehearing discovery depositions as is allowed in actions under the Federal Rules of Civil Procedure. Discovery under the Federal Rules of Civil Procedure, including deposition practice, is often a source of delay, extensive collateral disputes and high litigation costs. The Bureau believes expanding the scope of prehearing discovery to permit discovery depositions is not warranted for several reasons.

First, the Bureau believes that even if limitations were placed on the availability of discovery depositions, there remains a significant potential for extensive collateral litigation over their use. Second, use of discovery depositions is in tension with the statutory timetable for hearings in cease-and-desist proceedings under section 1053(b) of the Act. Indeed, in part for this reason, the Rules allow the hearing officer to decide whether and to what extent to permit expert discovery in adjudication proceedings. Allowing prehearing depositions would present extreme scheduling difficulties in those cases in which respondents did not request hearing dates outside the 30-to-60 day timeframe set forth in the Act.

Third, the rationale for permitting oral depositions in litigation under the Federal Rules of Civil Procedure does not apply equally to a Bureau administrative proceeding. In the typical civil action between private parties, where neither party can compel testimony prior to the filing of the complaint, oral depositions play a critical role in permitting evidence to be gathered prior to trial. Here, by contrast, the Bureau can compel such testimony and is committed to making it available to respondents pursuant to § 1081.206.

Finally, these Rules include three provisions that address in significant part a respondent's interest in obtaining discovery prior to the start of the hearing. Section 1081.206 mandates that the Division of Enforcement generally make available not only transcripts of testimony, but documents obtained from persons not employed by the Bureau during the investigation leading to the

proceeding as well as certain documents of the Bureau. Section 1081.208 authorizes the issuance of subpoenas duces tecum for the production of documents returnable at any designated time or place. In addition, § 1081.210 provides for expert discovery in appropriate cases. Given these discovery mechanisms, the ability to subpoena witnesses to testify at the hearing, the ability to take the deposition of material witnesses unavailable for hearing, and the ability of respondents to conduct informal discovery, the marginal benefits of prehearing depositions are not justified by their likely cost in time, expense, collateral disputes and scheduling complexities.

Section 1081.210 Expert Discovery

This section is modeled after the FTC Rules, 16 CFR 3.31A. Neither the Uniform Rules nor the SEC Rules provide for expert discovery. The Bureau has provided for expert discovery so that the parties may fully understand the other side's position prior to the hearing, which will enable a clearer and more efficient airing of the issues at the hearing, and which may also clarify the issues for a possible prehearing settlement. It will also enable the parties to identify rebuttal expert witnesses, if needed, prior to the hearing.

Paragraph (a) provides that the hearing officer shall establish a date for the exchange of expert reports in the scheduling order. This provision is intended to allow flexibility in scheduling expert discovery depending on the complexity of the case and the date of the hearing.

Paragraph (b) limits parties to five expert witnesses, including any rebuttal or surrebuttal experts, as do the FTC Rules, 16 CFR 3.31A. The Bureau believes this is sufficient to provide the parties with an opportunity to adequately present expert testimony without unduly delaying the proceedings. Paragraph (b) also provides that no party may call an expert witness unless that witness has been identified and provided a report in accordance with this section, unless the hearing officer provides otherwise at a scheduling conference. The last clause is intended to reflect a hearing officer's discretion, at a scheduling conference, to dispense with or otherwise limit expert discovery in a particular case (as expressly provided for in paragraph (e) of this section).

Paragraph (c) sets forth the required contents of an expert report. This section is based upon the corresponding provisions of the FTC Rules.

Paragraph (d) provides for expert depositions, which are not to exceed 8 hours absent agreement of the parties or an order by the hearing officer. These time limits are intended to provide adequate time to prepare for expert testimony without unduly delaying the proceedings. Paragraph (d) also provides that expert depositions shall be conducted pursuant to the procedures set forth in § 1081.209. Finally, paragraph (d) provides that an expert's deposition shall be conducted after submission of the expert's report but no later than seven days prior to the deadline for submission of rebuttal expert reports. This provision is intended to allow parties to rely upon the deposition of an opposing party's expert in the preparation of a rebuttal expert report. Because, pursuant to paragraph (a), rebuttal reports are due 28 days after the exchange of expert reports, expert depositions will need to take place within that 28 day period.

Finally, paragraph (e) authorizes the hearing officer to dispense with expert discovery in appropriate cases. The Bureau envisions hearing officers relying on this provision in cease-and-desist proceedings brought pursuant to section 1053(b) of the Act, where the respondent has not requested a hearing date outside the statutory 30-to-60 day timeframe. In such cases, it may be appropriate to dispense with expert discovery for timing reasons, while allowing the parties to call expert witnesses.

Section 1081.211 Interlocutory Review

This section sets forth the procedure and standards applicable to interlocutory review by the Director of a ruling or order of the hearing officer. In contrast to the practice in the federal judicial system, but like the SEC, the Director may take up a matter on his or her own motion at any time, even if a hearing officer does not certify it for interlocutory review.

Paragraph (b) provides that any party may file a motion for certification of a ruling or order for interlocutory review within five days of service of the order or ruling. Responses to such motions are due within three days, and the hearing officer is required to rule upon such a motion within five days thereafter.

Paragraph (c) sets forth the permissible bases for certifying a ruling or order. Certification is appropriate if the hearing officer's ruling would compel testimony or production of documents from Bureau officers or employees, or officers or employees from another governmental agency. This is consistent with the SEC Rules, 17 CFR 201.400. Like FTC Rules, 16 CFR 3.23(a)(1), however, this provision includes officers and employees from other governmental agencies, and not just the Bureau, in order to afford the same treatment to other agencies within the federal government. Paragraph (c) also provides for certification of rulings or orders as to which there is a substantial ground for difference of opinion and an immediate review may materially advance the completion of the proceeding or subsequent review will be an inadequate remedy. The hearing officer may also certify a ruling or order where the ruling or order involves a motion for disqualification of the hearing officer or the suspension of an individual from appearing before the Bureau.

Paragraph (d) provides that a party whose motion for certification is denied by the hearing officer may petition the Director directly for interlocutory review. This provision is intended to guard against a hearing officer's unwillingness to certify a ruling that appears to meet the standards set forth in the section. The Bureau expects such direct petitions to the Director to be used sparingly.

Paragraph (e) governs the Director's review of matters certified pursuant to paragraph (c) or for which review is sought pursuant to paragraph (d). It sets forth the policy of the Bureau that interlocutory review is disfavored and provides that the Director will grant such review only in extraordinary circumstances.

Paragraph (f) provides that proceedings will not be stayed by the filing of a motion for certification for interlocutory review or a grant of such review unless the hearing officer or the Director shall so order. This is intended to promote the expeditious resolution of proceedings and to deter frivolous motions for certification or review.

Section 1081.212 Dispositive Motions

This section lays out the procedures and standards for motions to dismiss and motions for summary disposition. It expressly provides for the filing of motions to dismiss, but makes clear that filing such a motion does not affect a party's obligation to file an answer or take any other action. This is intended to ensure that motions to dismiss do not delay the proceedings unnecessarily. The timelines for decisions on dispositive motions, discussed below, should help ensure that a party ultimately determined to be entitled to dismissal is not required to engage in the adjudicative process for a lengthy period of time.

Paragraph (b) provides that a respondent may file a motion to dismiss

asserting that, even assuming the truth of the facts alleged in the notice of charges, it is entitled to dismissal as a matter of law. Neither the SEC Rules, the FTC Rules, nor the Uniform Rules specifically set forth procedures or a standard applicable to motions to dismiss, although the FTC Rules and Uniform Rules appear to contemplate such motions. *See* 16 CFR 3.22(a) (referencing motions to dismiss); 12 CFR 19.5(b)(7) (same). The Bureau has determined that such motions are appropriate and should be provided for in the Rules, but should not serve to delay the proceedings.

Paragraphs (c) and (d) govern the filing of motions for summary disposition. They adopt standards similar to those set forth in the Uniform Rules, the SEC Rules, and the FTC Rules for such motions. Any party to a proceeding may file a motion for summary disposition of a proceeding or for partial summary disposition of a proceeding if: (1) There is no genuine issue as to any material fact; and (2) the moving party is entitled to a favorable decision as a matter of law. The motion, which may be filed after a respondent's answer has been filed and documents have been made available for inspection and copying pursuant to § 1081.206, must be accompanied by a statement of the uncontested material facts, a brief, and any documentary evidence in support of the motion.

Any party opposing such a motion must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists, supported by the same type of evidence permitted with a motion for summary disposition, and a brief in support of the contention that summary disposition would be inappropriate. These paragraphs are modeled after the Uniform Rules, 12 CFR 19.29.

Pursuant to paragraphs (e), (f), and (g), motions to dismiss and for summary disposition are subject to a 35-page limit (modeled on the SEC Rules, 17 CFR 201.250(c)), responses to such motions are due within 20 days (modeled on the Uniform Rules, 12 CFR 19.29(b)(1)), and reply briefs are due within five days of the response and shall not exceed 10 pages. Oral argument is permitted at the request of any party or by motion of the hearing officer.

Paragraph (h) provides that the hearing officer must decide a dispositive motion within 30 days of the expiration of the time for filing all oppositions and replies. The Uniform Rules do not set a deadline for a decision on dispositive motions. The FTC Rules provide for the Commission to decide substantive motions within 45 days, 16 CFR 3.22(a), and the SEC Rules state that motions for summary disposition are to be decided ''promptly'' by the hearing officer, 17 CFR 201.250(b). The Bureau has adopted the 30-day timeframe for decisions on dispositive motions in keeping with its emphasis on expeditious decision-making in administrative proceedings. The Bureau believes that 30 days affords sufficient time for the hearing officer to properly assess the merits of the motion and draft either a ruling denying the motion or a recommended decision granting it.

If the hearing officer finds that a party is not entitled to dismissal or summary disposition, he or she shall make a ruling denying that motion. This ruling would not be subject to interlocutory appeal unless such an appeal was granted pursuant to the procedures and standards set forth in § 1081.211. If the hearing officer determines that dismissal or summary adjudication is appropriate, he or she will issue a recommended decision to that effect. If a party, for good cause shown, cannot yet present facts essential to justify opposition to the motion, the hearing officer is to deny or defer the motion.

Section 1081.213 Partial Summary Disposition

This section is modeled on the FTC Rules, 16 CFR 3.24(a)(5). It permits a hearing officer who denies summary adjudication of the whole case nevertheless to issue an order specifying the facts that appear without substantial controversy. Those facts will be deemed established in the proceeding. This section enables the hearing officer to narrow the dispute between the parties so that the hearing can proceed as efficiently as possible.

Section 1081.214 Prehearing Conferences

This section sets forth the procedures for a prehearing conference, which the hearing officer may convene on his own motion or at the request of a party. It sets forth matters that may be discussed at a prehearing conference. As with a scheduling conference pursuant to § 203, the conference is presumptively public unless the hearing officer determines otherwise under the standard set forth in § 1081.119.

Section 1081.215 Prehearing Submissions

This section is modeled primarily after the Uniform Rules, 12 CFR 19.32, which provide for mandatory prehearing submissions by the parties. Section 215 requires that the following documents be served upon the other parties no later than 10 days prior to the start of the hearing: A prehearing statement; a final list of witnesses to be called to testify that includes a description of the expected testimony of each witness; any prior sworn statements that a party intends to admit into evidence pursuant to § 1081.303; a list of exhibits along with a copy of each exhibit; and any stipulations of fact or liability. The failure of a party to comply with this provision will preclude the party from presenting any witnesses or exhibits not listed in its prehearing submission at the hearing, except for good cause shown. To account for cases in which the hearing officer has dispensed with expert discovery, this section also requires that a statement of any expert's qualifications and other information concerning the expert be turned over if it has not been provided pursuant to § 1081.210.

The FTC Rules do not provide for a prehearing submission, and the SEC Rules, 17 CFR 201.222, do not make such a submission mandatory. The Bureau has followed the Uniform Rules' model as it believes that prehearing submissions will assist the parties in clarifying and narrowing the issues to be adjudicated at the hearing, which is especially important under the expedited hearing schedule provided for by section 1053(b) of the Act and these Rules.

Section 1081.216 Amicus Participation

This section, based upon the SEC Rules, 17 CFR 201.210, allows for amicus briefs in proceedings under this part, but only under certain circumstances. An amicus brief may be allowed when a motion for leave to file the brief has been granted; the brief is accompanied by written consent of all parties; the brief is filed at the request of the Director or the hearing officer, as appropriate; or the brief is presented by the United States or an officer or agency thereof, or by a State (defined to include territories or possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa or any federally recognized Indian tribe), or a political subdivision thereof.

A motion to file an amicus brief is subject to the procedural requirements set forth in § 1081.205. An amicus will be granted oral argument only for extraordinary reasons.

The Bureau considered incorporating other provisions of the SEC Rules regarding participation but decided against doing so. The Bureau believes that allowing intervention by other parties will serve to delay the

proceedings with little or no attendant benefit, particularly in light of the allowance for amicus participation. The Bureau has also decided against including a provision providing for the limited participation of federal or state criminal prosecutors for the purpose of seeking stays during the pendency of criminal investigations or prosecutions arising out of the same or similar facts as are at issue in an adjudication proceeding. The Bureau believes that such stays can be appropriately sought by Enforcement Counsel upon request of Federal or state agencies.

Subpart C—Hearings

Section 1081.300 Public Hearings

This section provides that hearings before the Bureau will be presumptively public, a practice that is consistent with the provisions of the FTC Rules, 16 CFR 3.41(a), SEC Rules, 17 CFR 201.301, and the Uniform Rules, 12 CFR 19.33(a). Specifically, hearings will be public unless a confidentiality order is entered by the hearing officer according to the standard set forth in § 1081.119, or unless the Director otherwise orders a non-public hearing on the ground that holding an open hearing would be contrary to the public interest.

Section 1081.301 Failure To Appear

This section, which is modeled after the Uniform Rules, 12 CFR 19.21, provides that the failure of a respondent to appear in person or by duly authorized counsel at the hearing may constitute a waiver of the respondent's right to a hearing and may be deemed an admission of the facts alleged and a consent to the relief sought in the notice of charges. Without further notice to the respondent, the hearing officer shall file a recommended decision addressing the relief sought in the notice of charges.

Section 1081.302 Conduct of Hearings

This section provides general principles for the conduct of hearings and the order in which the parties are to present their cases. The first sentence emphasizing the goals of fairness, impartiality, expediency, and orderliness is drawn from the SEC Rules, 17 CFR 201.300. The remainder of the section, which governs the order in which the parties are to present their cases, is modeled after the Uniform Rules, 12 CFR 19.35.

Section 1081.303 Evidence

This section sets forth rules regarding the offering and admissibility of evidence at hearings, and adopts evidentiary standards similar to those set forth in the FTC Rules, SEC Rules, and the Uniform Rules.

The section provides that Enforcement Counsel shall bear the burden of proving the ultimate issue(s) of the Bureau's claims at the hearing.

Consistent with general administrative practice, this section provides that evidence that is relevant, material, reliable, and not unduly repetitive shall be admissible to the fullest extent authorized by the APA and other applicable law, and that evidence shall not be excluded solely on the basis of its being hearsay if it is otherwise admissible and bears satisfactory indicia of reliability.

This section provides that official notice may be taken of any material fact that is not subject to reasonable dispute in that it is either generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. It provides further that duplicate copies of documents are admissible to the same extent as originals unless a genuine issue is raised about the veracity or legibility of a document. Parties may, at any stage of the proceeding, stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations may be received in evidence at the hearing and are binding on the parties. This section also provides that documents generated by respondents that come from their own files are presumed authentic and kept in the regular course of business and that the burden of proof is on the respondent to introduce evidence to rebut such a presumption.

Objections to the admissibility of evidence must be timely made and a failure to object to the admission of evidence shall constitute a waiver of the objection. Parties are entitled to present their cases or defenses by sworn oral testimony and documentary evidence. Witnesses at a hearing are required to testify under oath or affirmation.

The provisions in this section about introducing prior sworn statements of witnesses into the record are modeled after the SEC Rules, 17 CFR 201.235. The section specifies the circumstances under which prior sworn statements by a non-party witness are admissible into the record. These statements can be admitted if a witness is dead, outside of the United States, unable to attend because of age, sickness, infirmity, imprisonment or other disability, or if the party offering the sworn statement is unable to procure the attendance of the witness by subpoena. Even if these conditions are not met, a prior sworn statement may be introduced into the record in the discretion of the hearing officer.

Section 1081.304 Record of the Hearing

Modeled on the FTC Rules, 16 CFR 3.44, this section provides that hearings will be stenographically reported and transcribed and that the original transcript shall be part of the record. It outlines the procedure by which a party may request correction of the transcript. Finally, it states that upon completion of the hearing, the hearing officer will issue an order closing the record after giving the parties three days to determine whether the record is complete or requires supplementation.

Section 1081.305 Post-Hearing Filings

This section is drawn largely from the Uniform Rules, 12 CFR 19.37, and provides that the parties may file proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days following service of a notice on the parties that the transcript has been properly filed or within such longer period as the hearing officer may order. Proposed findings and conclusions must be supported by citation to any relevant authorities, and by page references to any relevant portions of the record. Responsive briefs may be filed to these proposed findings and conclusions within 15 days after the deadline for the proposed findings and conclusions, provided that the party responding has filed its own proposed findings and conclusions. The hearing officer shall not order the filing by any party of any post-hearing brief or responsive brief in advance of the other party's filing of its post-hearing brief.

Section 1081.306 Record in Proceedings Before Hearing Officer; Retention of Documents; Copies

This section, drawn from the SEC Rules, 17 CFR 201.350, lists the documents that comprise the record of a proceeding before the hearing officer. It provides that those documents excluded from evidence should be excluded from the record but retained until either a decision of the Bureau has become final, or the conclusion of any judicial review of the Director's final order. This section also states that a copy of a document in the record may be substituted for an original.

Subpart D—Decision and Appeal

Section 1081.400 Recommended Decision of the Hearing Officer

This section adopts the general framework governing decisions by the hearing officer from the SEC Rules, 17 CFR 201.360. It provides that the hearing officer will file a recommended decision in each case within a specified

time frame. Unlike the SEC Rule, which provides that the hearing officer will issue an ''initial decision,'' this section provides that the hearing officer's decision will be a recommended decision to the Director.

This section also deviates from the SEC model in that it does not provide for multiple ''tracks'' or timelines, but just one. This section provides that the hearing officer will file a recommended decision in each case no later than 90 days after the deadline for filing post-hearing responsive briefs and in no event later than 300 days after service of the notice of charges. The 300-day timeframe is taken from the SEC Rules, 17 CFR 201.360(a)(2), and the 90-day timeframe is modeled on the FTC Rules, 16 CFR 3.51(a). Requests by the hearing officer for extensions of this time frame must be made to the Director and will be granted only if the Director determines that additional time is necessary or appropriate in the public interest. The Bureau anticipates such requests and extensions to be rare. As noted above, this provision was adopted to ensure the timely resolution of adjudication proceedings in light of the experience of other agencies. The Bureau believes that the 90-day and 300-day timelines set forth in this section provide sufficient time for the hearing officer to conduct appropriate proceedings and issue an informed recommended decision.

Paragraph (c) of this section is modeled on the SEC Rules, 17 CFR 201.360(b), and sets forth the contents of the recommended decision, providing that the recommended decision shall include a statement of findings of fact and conclusions of law, as well as the reasons or basis therefore, and an appropriate order, sanction, relief or denial thereof. The recommended decision shall also state that a notice of appeal may be filed within 10 days after service of the recommended decision, and shall include a statement that the Director may issue a final decision and order adopting the recommended decision, unless a party timely files and perfects a notice of appeal. The recommended decision shall be filed with the Executive Secretary, who will promptly serve the recommended decision on the parties.

Drawing from the FTC Rules, 16 CFR 3.51(d), paragraph (d) of this section provides that the recommended decision shall be made by the hearing officer who presided over the hearing, except when he or she has become unavailable to the Bureau. Paragraph (e) provides that the hearing officer may reopen proceedings for receipt of further evidence upon a showing of good cause until the close of the hearing record. With the exception of correcting clerical errors or addressing a remand from the Director, the hearing officer's jurisdiction terminates upon the filing of the recommended decision.

Section 1081.401 Transmission of Documents to Director; Record Index; Certification

Modeled on the Uniform Rules, 12 CFR 19.38(b) and the SEC Rules, 17 CFR 201.351(c), this section directs the hearing officer to furnish to the Director a certified index for the case at the same time that the hearing officer files the recommended decision. It also establishes the process by which the record is transmitted to the Director for review on appeal.

Section 1081.402 Notice of Appeal; Review by the Director

This section contains the process for review of a recommended decision by the Director. Paragraph (a) is drawn from the FTC Rules, 16 CFR 3.52(b), and states that any party may object to the recommended decision of the hearing officer by filing a notice of appeal to the Director within 10 days of the recommended decision and perfecting that notice of appeal by filing an opening brief within 30 days of the recommended decision. Any party may respond to the opening brief by filing an answering brief within 30 days of service of the opening brief, and reply briefs may be filed within seven days after that. Appeals to the Director are available as of right in all cases where the hearing officer has issued a recommended decision.

This section also provides that within 40 days after the date of service of the recommended decision, the Director, on his or her own initiative, may order further briefing or argument with respect to any recommended decision or portion of any recommended decision or issue a final decision and order adopting the recommended decision. The 40-day time period is intended to provide the Director with the benefit of knowing whether any party has filed and perfected an appeal before determining whether further briefing and argument regarding a recommended decision is necessary. Any such order shall set forth the scope of further review and the issues that will be considered and will provide for the filing of briefs if the Director deems briefing appropriate.

Finally, this section provides that, pursuant to 5 U.S.C. 704, a perfected appeal to the Director of a recommended decision is a prerequisite to the seeking of judicial review of a final decision and order, unless the Director issues a final decision and order that does not incorporate the recommended decision, in which case judicial review shall be available to the extent that the Director's final decision and order does not adopt the recommended decision.

Section 1081.403 Briefs Filed With the Director

This section outlines the requirements for briefs filed with the Director. Paragraph (a) is modeled on the SEC Rules, 17 CFR 201.350(b), and governs the content of briefs. Paragraph (b) is also drawn from the SEC Rules, 17 CFR 201.350(c), and sets forth length limitations for briefs. Unlike the SEC and the FTC, the Bureau has placed page limits—rather than word limits—on briefs. This change is intended to simplify the Rules and place less of a burden upon the parties but should have no substantive impact.

Section 1081.404 Oral Argument Before the Director

This section adopts the SEC's policy for oral argument on appeal wherein the Director will consider appeals, motions, and other matters on the basis of the papers filed without oral argument unless the Director determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument. A party who seeks oral argument is directed to indicate such a request on the first page of its opening or answering brief. Oral argument shall be public unless otherwise ordered by the Director.

Section 1081.405 Decision of the Director

This section contains rules regarding the final decision and order of the Director. Paragraph (a) provides for the scope of the Director's review and defines the record before the Director as consisting of all items that were part of the record below in accordance with § 1081.306; any notices of appeal or order directing review; all briefs, motions, submissions, and other papers filed on appeal or review; and the transcript of any oral argument held.

The Director may have the advice and assistance of decisional employees in considering and disposing of a case. In rendering a final decision, the Director will affirm, adopt, modify, set aside, or remand for further proceedings the recommended decision and will include in the decision a statement of the reasons or basis for the Director's

actions and the findings of fact relied upon.

In accordance with section 1053 of the Act, this section provides that, at the expiration of the time permitted for the filing of reply briefs with the Director, the Executive Secretary will notify the parties that the case has been submitted for final Bureau decision by the Director. The Director will then issue a final decision and order within 90 days of such notification to the parties. This policy ensures a timely final resolution to all administrative adjudications.

Copies of final decisions and orders by the Director will be served on each party, upon other persons required by statute, and, if directed by the Director or required by statute, upon any appropriate state or Federal supervisory authority. The final decision and order will also be published on the Bureau's Web site or as otherwise deemed appropriate by the Bureau.

Section 1081.406 Reconsideration

This section permits parties to file petitions for reconsideration of a final decision and order within 14 days after service of the decision and order. The Bureau has adopted the practice set forth in the SEC Rules, 17 CFR 201.470, pursuant to which no response to a petition for reconsideration will be filed unless requested by the Director, and the Bureau has added a provision providing that the Director will request such a response before granting any motion for reconsideration. This is intended to lessen the burden on prevailing parties while preserving their opportunity to be heard if the Director is considering granting a motion for reconsideration.

Section 1081.407 Effective Date; Stays Pending Judicial Review

This section governs the effective date of the Director's final orders. We have incorporated the requirement in section 1053(b) of the Act that orders to cease and desist shall become effective 30 days after the date of service of the Director's final decision and order.

This section also contains the rules and procedures regarding stays of Bureau orders. Any party subject to a final order, other than a consent order, may apply to the Director for a stay of all or part of that order pending judicial review. Such a motion must be made within 30 days of service of the Director's final decision and order. A motion for a stay shall address the likelihood of the movant's success on appeal, whether the movant will suffer irreparable harm if a stay is not granted, the degree of injury to other parties if a stay is granted, and why the stay is in the public interest.

Finally, this section adopts the provision from the Uniform Rules, 12 CFR 19.41, providing that the commencement of proceedings for judicial review of a final decision and order of the Director does not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director.

C. Procedural Requirements

1. Regulatory Requirements

The Rules relate solely to agency procedure and practice and, thus, are not subject to the notice and comment requirements of the APA. *See* 5 U.S.C. 553(b). Although the Rules are exempt from these requirements, the Bureau invites comment on them. Because no notice of proposed rulemaking is required, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2) do not apply.

2. Section 1022(b)(2) Provisions

The CFPB has conducted an analysis of benefits, costs, and impacts [3] and consulted with the prudential regulators, the Department of Housing and Urban Development, the Securities and Exchange Commission, the Department of Justice, and the Federal Trade Commission, including with respect to whether the Rules are consistent with any relevant prudential, market, and systemic objectives administered by such agencies.[4]

The Bureau concludes that the Rules will benefit consumers and covered persons alike. The Rules do not impose any obligations on consumers or covered persons, nor do they have any direct relevance to consumers' access to consumer financial products and services. Rather, they provide a clear, efficient mechanism for the conduct of adjudication proceedings, which benefits consumers because the Rules offer a systematic process for protecting them from unlawful behavior. The Rules are intended to provide an expeditious decision-making process, which will benefit both consumers and covered persons. The Rules adopt an affirmative disclosure approach to fact discovery, pursuant to which the Bureau will make available to respondents the information obtained by the Division of Enforcement from persons not employed by the Bureau prior to the institution of proceedings, in connection with the investigation leading to the institution of proceedings. This affirmative disclosure obligation substitutes for the traditional civil discovery process, which can be both time-consuming and expensive. The Bureau believes that the Rules, on the whole, will afford covered persons with a relatively inexpensive way to have their cases heard. The Rules are based upon, and drawn from, existing rules of the prudential regulators, the Federal Trade Commission, and the Securities and Exchange Commission. Their grounding in rules likely familiar to practitioners should further reduce the expense of administrative adjudication for covered persons.

Further, the Rules have no unique impact on insured depository institutions or insured credit unions with less than $10 billion in assets described in section 1026(a) of the Act, and do not have a unique impact on rural consumers.

List of Subjects in 12 CFR Part 1801

Administrative practice and procedure, Banks, banking, Consumer protection, Credit, Credit unions, Federal Reserve System, Law enforcement, National banks, Savings associations, Trade practices.

For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1081 to 12 CFR Chapter X to read as set forth below.

TITLE 12—BANKS AND BANKING

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

PART 1081—RULES OF PRACTICE FOR ADJUDICATION PROCEEDINGS

Subpart A—General Rules

Sec.

[3] Section 1022(b)(2)(A) addresses the consideration of the potential benefits and costs of regulation to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services; the impact of proposed rules on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[4] The President's July 11, 2011, Executive Order 13579 entitled ''Regulation and Independent Regulatory Agencies,'' asks the independent agencies to follow the cost-saving, burden-reducing principles in Executive Order 13563; harmonization and simplification of rules; flexible approaches that reduce costs; and scientific integrity. In the spirit of Executive Order 13563, the CFPB has consulted with the Office of Management and Budget regarding this interim final rule.

Authority: Pub. L. 111–203, Title X.

Subpart A—General Rules

§ 1081.100 Scope of the rules of practice.

This part prescribes rules of practice and procedure applicable to adjudication proceedings authorized by section 1053 of the Consumer Financial Protection Act of 2010 (''Act'') to ensure or enforce compliance with the provisions of the Act, rules prescribed by the Bureau under the Act, and any other Federal law or regulation that the Bureau is authorized to enforce. These rules of practice do not govern the conduct of Bureau investigations, investigational hearings or other proceedings that do not arise from proceedings after a notice of charges.

§ 1081.101 Expedition and fairness of proceedings.

To the extent practicable, consistent with requirements of law, the Bureau's policy is to conduct such adjudication proceedings fairly and expeditiously. In the conduct of such proceedings, the hearing officer and counsel for all parties shall make every effort at each stage of a proceeding to avoid delay. With the consent of the parties, the Director, at any time, or the hearing officer at any time prior to the filing of his or her recommended decision, may shorten any time limit prescribed by this part.

§ 1081.102 Rules of construction.

For the purposes of this part:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neutral gender encompasses all three, if such use would be appropriate;

(c) Unless context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

(d) To the extent this part uses terms defined by the Act, such terms shall have the same meaning as set forth in the Act, unless defined differently by § 1081.103.

§ 1081.103 Definitions.

For the purposes of this part, unless explicitly stated to the contrary:

Act means the Consumer Financial Protection Act of 2010, as amended, Public Law No. 111–203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.*

Adjudication proceeding means a proceeding conducted pursuant to section 1053 of the Act and intended to lead to the formulation of a final order other than a temporary cease and desist order issued pursuant to section 1053(c) of the Act.

Bureau means the Bureau of Consumer Financial Protection.

Chief hearing officer means the hearing officer charged with assigning hearing officers to specific proceedings, in the event there is more than one hearing officer available to the Bureau.

Counsel means any attorney representing a party or any other person representing a party pursuant to § 1081.107.

Decisional employee means any employee of the Bureau who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Director or the hearing officer, respectively, in preparing orders, recommended decisions, decisions, and other documents under this part.

Director means the Director of the Bureau or a person authorized to perform the functions of the Director in accordance with the law.

Division of Enforcement means the division of the Bureau responsible for enforcement of Federal consumer financial law.

Enforcement Counsel means any individual who files a notice of appearance as counsel on behalf of the Bureau in an adjudication proceeding.

Executive Secretary means the Executive Secretary of the Bureau.

Final order means an order issued by the Bureau with or without the consent of the respondent, which has become final, without regard to the pendency of any petition for reconsideration or review.

General Counsel means the General Counsel of the Bureau or any Bureau employee to whom the General Counsel has delegated authority to act under this part.

Hearing officer means an administrative law judge or any other person duly authorized to preside at a hearing.

Notice of charges means the pleading that commences an adjudication proceeding, as described in § 1081.200 of this part.

Party means the Bureau and any person named as a party in any notice of charges issued pursuant to this part.

Person means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Person employed by the Bureau means Bureau employees, contractors, agents, and others acting for or on behalf of the Bureau, or at its direction, including consulting experts.

Respondent means any party other than the Bureau.

State means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana

Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

§ 1081.104 Authority of the hearing officer.

(a) *General Rule.* The hearing officer shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay. No provision of this part shall be construed to limit the powers of the hearing officers provided by the Administrative Procedure Act, 5 U.S.C. 556, 557.

(b) *Powers.* The powers of the hearing officer include but are not limited to the power:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas or orders;

(3) To take depositions or cause depositions to be taken;

(4) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(5) To regulate the course of a proceeding and the conduct of parties and their counsel;

(6) To reject written submissions that fail to comply with the requirements of this part, and to deny confidential status to documents and testimony without prejudice until a party complies with all relevant rules;

(7) To hold conferences for settlement, simplification of the issues, or any other proper purpose and require the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(8) To inform the parties as to the availability of one or more alternative means of dispute resolution, and to encourage the use of such methods;

(9) To certify questions to the Director for his or her determination in accordance with the rules of this part;

(10) To consider and rule upon, as justice may require, all procedural and other motions appropriate in adjudication proceedings;

(11) To issue and file recommended decisions;

(12) To recuse himself or herself by motion made by a party or on his or her own motion;

(13) To issue such sanctions against parties or their counsel as may be necessary to deter repetition of sanctionable conduct or comparable conduct by others similarly situated, as provided for in this part or as otherwise necessary to the appropriate conduct of hearings and related proceedings, provided that no sanction shall be imposed before providing the sanctioned person an opportunity to show cause why no such sanction should issue; and

(14) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 1081.105 Assignment, substitution, performance, disqualification of hearing officer.

(a) *How assigned.* In the event that more than one hearing officer is available to the Bureau for the conduct of proceedings under this part, the presiding hearing officer shall be designated by the chief hearing officer, who shall notify the parties of the hearing officer designated.

(b) *Interference.* Hearing officers shall not be responsible or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Bureau, and all direction by the Bureau to the hearing officer concerning any adjudication proceedings shall appear in and be made part of the record.

(c) *Disqualification of hearing officers.*

(1) When a hearing officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefore.

(2) Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth the facts alleged to constitute grounds for disqualification. Such motion shall be filed at the earliest practicable time after the party learns, or could reasonably have learned, of the alleged grounds for disqualification. If the hearing officer does not disqualify himself or herself within 10 days, he or she shall certify the motion to the Director pursuant to § 1081.211, together with any statement he or she may wish to have considered by the Director. The Director shall promptly determine the validity of the grounds alleged, either directly or on the report of another hearing officer appointed to conduct a hearing for that purpose, and shall either direct the reassignment of the matter or confirm the hearing officer's continued role in the matter.

(d) *Unavailability of hearing officer.* In the event that the hearing officer withdraws or is otherwise unable to perform the duties of the hearing officer, the chief hearing officer or the Director shall designate another hearing officer to serve.

§ 1081.106 Deadlines.

The deadlines for action by the hearing officer established by §§ 1081.203, 1081.205, 1081.211, 1081.212, and 1081.400, or elsewhere in this part, confer no substantive rights on respondents.

§ 1081.107 Appearance and practice in adjudication proceedings.

(a) *Appearance before the Bureau or a hearing officer.*

(1) By attorneys. Any member in good standing of the bar of the highest court of any state may represent others before the Bureau if such attorney is not currently suspended or debarred from practice before the Bureau.

(2) By non-attorneys. So long as such individual is not currently suspended or debarred from practice before the Bureau:

(i) An individual may appear on his or her own behalf;

(ii) A member of a partnership may represent the partnership;

(iii) A duly authorized officer of a corporation, trust or association may represent the corporation, trust or association; and

(iv) A duly authorized officer or employee of any government unit, agency, or authority may represent that unit, agency, or authority.

(3) Notice of appearance. Any individual acting as counsel on behalf of a party, including the Bureau, shall file a notice of appearance at or before the time that the individual submits papers or otherwise appears on behalf of a party in the adjudication proceeding. The notice of appearance must include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party, and, if applicable, include the attorney's jurisdiction of admission or qualification, attorney identification number, and a statement by the appearing attorney attesting to his or her good standing within the legal profession. By filing a notice of appearance on behalf of a party in an adjudication proceeding, the counsel agrees and represents that he or she is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the hearing officer, continue

to accept service until a new counsel has filed a notice of appearance or until the represented party indicates that he or she will proceed on a pro se basis. The notice of appearance shall provide the representative's email address, telephone number and business address and, if different from the representative's addresses, electronic or U.S. mail addresses at which the represented party may be served.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudication proceeding may be grounds for exclusion or suspension of counsel from the proceeding. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(c) *Standards of conduct; disbarment.*

(1) All attorneys practicing before the Bureau shall conform to the standards of ethical conduct required by the bars of which the attorneys are members.

(2) If for good cause shown, the Director believes that any attorney is not conforming to such standards, or that an attorney or counsel to a party has been otherwise engaged in conduct warranting disciplinary action, the Director may issue an order requiring such person to show cause why he should not be suspended or disbarred from practice before the Bureau. The alleged offender shall be granted due opportunity to be heard in his or her own defense and may be represented by counsel. Thereafter, if warranted by the facts, the Director may issue against the attorney or counsel an order of reprimand, suspension, or disbarment.

§ 1081.108 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice of charges shall be signed by at least one counsel of record in his or her individual name and shall state counsel's address, email address, and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address, e-mail address, and telephone number on every filing or submission of record. Papers filed by electronic transmission may be signed with an ''/s/'' notation, which shall be deemed the signature of the party or representative whose name appears below the signature line.

(b) *Effect of signature.*

(1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the hearing officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the filer.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions.* Counsel or a party that fails to abide by the requirements of this section may be subject to sanctions pursuant to § 1081.104(b)(13) of this part.

§ 1081.109 Conflict of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudication proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The hearing officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudication proceeding or also represents a non-party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § 1081.107(a)(3):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and/or non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any conflicts of interest during the course of the proceeding.

§ 1081.110 Ex parte communication.

(a) *Definitions.*

(1) For purposes of this section, ex parte communication means any material oral or written communication relevant to the merits of an adjudication proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person not employed by the Bureau (including such person's counsel); and

(ii) The hearing officer handling the proceeding, the Director, or a decisional employee.

(2) Exception. A request for status of the proceeding does not constitute an ex parte communication.

(3) Pendency of an adjudication proceeding means the time from when the Bureau issues a notice of charges, unless the person responsible for the communication has knowledge that a notice of charges will be or is likely to be issued, in which case the pendency of an adjudication shall commence at the time of his or her acquisition of such knowledge, or from when an order by a court of competent jurisdiction remanding a Bureau decision and order for further proceedings becomes effective, until the time the Director enters his or her final decision and order in the proceeding and the time permitted to seek reconsideration of that decision and order has elapsed. For purposes of this section, an order of remand by a court of competent jurisdiction shall be deemed to become effective when the Bureau determines not to file an appeal or a petition for a writ of certiorari, or when the time for filing such an appeal or petition has expired without an appeal or petition having been filed, or when such a petition has been denied. If a petition for reconsideration of a Bureau decision is filed pursuant to § 1081.406, the matter shall be considered to be a pending adjudication proceeding until the time the Bureau enters an order disposing of the petition.

(b) *Prohibited ex parte communications.* During the pendency of an adjudication proceeding, except to the extent required for the disposition of ex parte matters as authorized by law or as otherwise authorized by this part:

(1) No interested person not employed by the Bureau shall make or knowingly cause to be made to the Director, or to the hearing officer, or to any decisional employee, an ex parte communication; and

(2) The Director, the hearing officer, or any decisional employee shall not make or knowingly cause to be made to any interested person not employed by the Bureau any ex parte communication.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication prohibited by paragraph (b) of this section is received by the hearing officer, the Director, or any decisional employee, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within 10 days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.*

(1) Adverse action on claim. Upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party and prohibited by paragraph (b) of this section, the Director or hearing officer, as appropriate, may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) Discipline of persons practicing before the Bureau. The Director may, to the extent not prohibited by law, censure, suspend, or revoke the privilege to practice before the Bureau of any person who makes, or solicits the making of, an unauthorized ex parte communication.

(e) *Separation of functions.* Except to the extent required for the disposition of ex parte matters as authorized by law, the hearing officer may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the Bureau in a case, other than the Director, may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision, except as witness or counsel in public proceedings.

§ 1081.111 Filing of papers.

(a) *Filing.* The following papers must be filed by parties in an adjudication proceeding: the notice of charges, notices of appearance, answer, motion, brief, request for issuance or enforcement of a subpoena, response, opposition, reply, notice of appeal, or petition for reconsideration. The hearing officer shall file all written orders, rulings, notices, or requests. Any papers required to be filed shall be filed with the Executive Secretary, except as otherwise provided herein.

(b) *Manner of filing.* Unless otherwise specified by the Director or the hearing officer, filing may be accomplished by:

(1) Electronic transmission upon any conditions specified by the Director or the hearing officer, or

(2) Any of the following methods if respondent demonstrates electronic filing is not practicable:

(i) Personal delivery to the Bureau's headquarters;

(ii) Delivery to a reliable commercial courier service or overnight delivery service; or

(iii) Mailing the papers by first class, registered, certified, or Express mail.

§ 1081.112 Formal requirements as to papers filed.

(a) *Form.* All papers filed by parties must:

(1) Set forth the name, address, telephone number, and e-mail address of the counsel or party making the filing;

(2) Be double-spaced (except for single-spaced footnotes and single-spaced indented quotations) and printed or typewritten on 8½; × 11 inch paper in 12-point or larger font;

(3) Include at the head of the paper, or on a title page, a caption setting forth the title of the case, the docket number of the proceeding, and a brief descriptive title indicating the purpose of the paper;

(4) Be paginated with margins at least 1 inch wide; and

(5) If filed by other than electronic means, be stapled, clipped or otherwise fastened in a manner that lies flat when opened.

(b) *Signature.* All papers must be dated and signed as provided in § 1081.108.

(c) *Number of copies.* Unless otherwise specified by the Director or the hearing officer, one copy of all documents and papers shall be filed if filing is by electronic transmission. If filing is accomplished by any other means, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits must be filed.

(d) *Authority to reject document for filing.* The Executive Secretary or the hearing officer may reject a document for filing that fails to comply with these rules.

(e) *Sensitive personal information.* Sensitive personal information, including but not limited to an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records, shall not be included in, and must be redacted or omitted from, filings where the filing party determines that such information is not relevant or otherwise necessary for the conduct of the proceeding.

(f) *Confidential treatment of information in certain filings.* A party seeking confidential treatment of information contained in a filing must contemporaneously file either a motion requesting such treatment in accordance with § 1081.119 of this part or a copy of the order from the Director, hearing officer, or federal court authorizing such confidential treatment. The filing must be accompanied by:

(1) A complete, sealed copy of the documents containing the materials as to which confidential treatment is sought, with the allegedly confidential material clearly marked as such, and with the first page of the document labeled ''Under Seal.'' If the movant seeks or has obtained a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties; and

(2) An expurgated copy of the materials as to which confidential treatment is sought, with the allegedly confidential materials redacted. The redacted version shall indicate any omissions with brackets or ellipses, and its pagination and depiction of text on each page shall be identical to that of the sealed version.

(g) *Certificate of service.* Any papers filed in an adjudicative proceeding shall contain proof of service on all other parties or their counsel in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The certificate of service must be affixed to the papers filed and signed in accordance with § 1081.108 of this part.

§ 1081.113 Service of papers.

(a) *When required.* In every adjudication proceeding, each paper required to be filed by § 1081.111 of this part shall be served upon each party in the proceeding in accordance with the provisions of this section; provided, however, that absent an order to the contrary, no service shall be required for motions which are to be heard ex parte.

(b) *Upon a person represented by counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to § 1081.107(a)(3) of this part, service shall be made pursuant to paragraph (c) of this section upon counsel, unless service upon the person represented is ordered by the Director or the hearing officer, as appropriate.

(c) *Method of service.* Except as provided in paragraph (d) of this section, service shall be made by delivering a copy of the filing by one of the following methods:

(1) Transmitting the papers by electronic transmission where the persons so serving each other have consented to service by specified electronic transmission and provided the Bureau and the parties with notice of the means for service by electronic transmission (e.g., email address or facsimile number);

(2) Personal service. Handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling or usual place of abode with some person of suitable age and discretion then residing therein;

(3) Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person; or

(4) Sending the papers through a commercial courier service or express delivery service.

(d) *Service of certain papers by the Bureau.* Service of the notice of charges, recommended decisions and final orders of the Bureau shall be effected as follows:

(1) Service of a notice of charges.

(i) To individuals. Notice of a proceeding shall be made to an individual by delivering a copy of the notice of charges to the individual or to an agent authorized by appointment or by law to receive such notice. Delivery, for purposes of this paragraph, means handing a copy of the notice to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the notice addressed to the individual by U.S. Postal Service certified, registered or Express Mail, or by third-party commercial carrier, for overnight delivery and obtaining a confirmation of receipt.

(ii) To corporations or entities. Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the notice of charges to an officer, managing or general agent, or any other agent authorized by appointment or law to receive such notice, by any method specified in paragraph (d)(1)(i) of this section.

(iii) Upon persons registered with the Bureau. In addition to any other method of service specified in paragraph (d)(1) of this section, notice may be made to a person currently registered with the Bureau by sending a copy of the notice of charges addressed to the most recent business address shown on the person's registration form by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

(iv) Upon persons in a foreign country. Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (d)(1) of this section, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(v) Record of service. The Bureau shall maintain a record of service of the notice of charges on parties, identifying the party given notice, the method of service, the date of service, the address to which service was made, and the person who made service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom the notice of charges was given. If service is made by U.S. Postal Service certified or Express Mail, the Bureau shall maintain the confirmation of receipt or of attempted delivery. If service is made to an agent authorized by appointment to receive service, the certificate of service shall be accompanied by evidence of the appointment.

(vi) Waiver of service. In lieu of service as set forth in paragraph (d)(1) of this section, the party may be provided a copy of the notice of charges by first class mail or other reliable means if a waiver of service is obtained from the party and placed in the record.

(2) *Service of recommended decisions and final orders.* Recommended decisions issued by the hearing officer and final orders issued by the Bureau shall be served promptly on each party pursuant to any method of service authorized under paragraph (d)(1) of this section. Such decisions and orders may also be served by electronic transmission if the party to be served has agreed to accept such service in writing, signed by the party or its counsel, and has provided the Bureau with information concerning the manner of electronic transmission.

§ 1081.114 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this part, by order of the Director or a hearing officer, or by any applicable statute, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday as set forth in 5 U.S.C. 6103(a). When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except when the time period within which an act is to be performed is 10 days or less, not including any additional time allowed for in paragraph (c) of this section.

(b) *When papers are deemed to be filed or served.* Filing and service are deemed to be effective:

(1) In the case of personal service or same day commercial courier delivery, upon actual receipt by person served;

(2) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(3) In the case of electronic transmission, upon transmission.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered, or certified mail, add three calendar days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one calendar day to the prescribed period; or

(3) If service is made by electronic transmission, add one calendar day to the prescribed period.

§ 1081.115 Change of time limits.

(a) Except as otherwise provided by law, the hearing officer may, in any proceeding before him or her, for good cause shown, extend the time limits prescribed by this part or by any notice or order issued in the proceedings. After appeal to the Director pursuant to § 1081.402, the Director may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party after notice and opportunity to respond is afforded all non-moving parties or on the Director's or the hearing officer's own motion, as appropriate.

(b) *Considerations in determining whether to extend time limits or grant postponements, adjournments and extensions.* In considering all motions for extensions of time filed pursuant to paragraph (a) of this section, the Director or the hearing officer should adhere to a policy of strongly disfavoring granting such motions, except in circumstances where the moving party makes a strong showing that the denial of the motion would substantially prejudice its case. In determining whether to grant any motions, the Director or hearing officer, as appropriate, shall consider, in addition to any other relevant factors:

(1) The length of the proceeding to date;

(2) The number of postponements, adjournments or extensions already granted;

(3) The stage of the proceedings at the time of the motion;

(4) The impact of the motion on the hearing officer's ability to complete the proceeding in the time specified by § 1081.400(a); and

(5) Any other matters as justice may require.

(c) *Time limit.* Postponements, adjournments, or extensions of time for filing papers shall not exceed 21 days unless the Director or the hearing officer, as appropriate, states on the record or sets forth in a written order the reasons why a longer period of time is necessary.

(d) *No effect on deadline for recommended decision.* The granting of any extension of time pursuant to this section shall not affect any deadlines set pursuant to § 1081.400(a).

§ 1081.116 Witness fees and expenses.

Respondents shall pay to witnesses subpoenaed for testimony or depositions on their behalf the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a deposition subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by any respondent requesting the issuance of a subpoena, except that fees and mileage need not be tendered in advance where the Bureau is the party requesting the subpoena. The Bureau shall pay to witnesses subpoenaed for testimony or depositions on behalf of the Division of Enforcement the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, but the Bureau need not tender such fees in advance.

§ 1081.117 Bureau's right to conduct examination, collect information.

Nothing contained in this part limits in any manner the right of the Bureau to conduct any examination, inspection, or visitation of any person, to conduct or continue any form of investigation authorized by law, to collect information in order to monitor the market for risks to consumers in the offering or provision of consumer financial products or services, or to otherwise gather information in accordance with law.

§ 1081.118 Collateral attacks on adjudication proceedings.

Unless a court of competent jurisdiction, or the Director for good cause, so directs, if an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudication proceeding, the challenged adjudication proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudication proceeding within the times prescribed in this part shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 1081.119 Confidential information; protective orders.

(a) *Procedure.* In any adjudication proceeding, a party; any person who is the owner, subject, or creator of a document subject to subpoena or which may be introduced as evidence; or any witness who testifies at a hearing or in a deposition pursuant to § 1081.209 may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information. The motion should include a general summary or extract of the documents or testimony without revealing confidential details. A motion for confidential treatment of documents should be filed in accordance with § 1081.112(f).

(b) *Basis for issuance.* Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be granted only upon a finding that public disclosure will likely result in a clearly defined, serious injury to the person requesting confidential treatment or after finding that the material constitutes sensitive personal information, as defined in § 1081.112(e).

(c) *Requests for additional information supporting confidentiality.* The hearing officer may require a movant under paragraph (a) of this section to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested within five days from the date of receipt by the movant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the documents to which the additional information relates, unless the hearing officer shall otherwise order for good cause shown at or before the expiration of such 5-day period.

(d) *Confidentiality of documents pending decision.* Pending a determination of a motion under this section, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the hearing officer. Any order issued in connection with a motion under this section shall be public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall be nonpublic.

§ 1081.120 Settlement.

(a) *Availability.* Any person who is notified that a proceeding may or will be instituted against him or her, or any party to a proceeding already instituted, may, at any time, propose in writing an offer of settlement.

(b) *Procedure.* An offer of settlement shall state that it is made pursuant to this section; shall recite or incorporate as a part of the offer the provisions of paragraphs (c)(3) and (4) of this section; shall be signed by the person making the offer, not by counsel; and shall be submitted to Enforcement Counsel.

(c) *Consideration of offers of settlement.*

(1) Offers of settlement shall be considered when time, the nature of the proceedings, and the public interest permit.

(2) Any settlement offer shall be presented to the Director with a recommendation, except that, if the recommendation is unfavorable, the offer shall not be presented to the Director unless the person making the offer so requests.

(3) By submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer:

(i) All hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;

(ii) The filing of proposed findings of fact and conclusions of law;

(iii) Proceedings before, and a recommended decision by, a hearing officer;

(iv) All post-hearing procedures;

(v) Judicial review by any court; and

(vi) Any objection to the jurisdiction of the Bureau under section 1053 of the Act.

(4) By submitting an offer of settlement the person further waives:

(i) Such provisions of this part or other requirements of law as may be construed to prevent any Bureau employee from participating in the preparation of, or advising the Director as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(ii) Any right to claim bias or prejudgment by the Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(5) If the Director rejects the offer of settlement, the person making the offer shall be notified of the Director's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (c)(4) of this section with respect to any discussions concerning the rejected offer of settlement.

§ 1081.121 Cooperation with other agencies.

It is the policy of the Bureau to cooperate with other governmental agencies to avoid unnecessary overlap or duplication of regulatory functions.

Subpart B—Initiation of Proceedings and Prehearing Rules

§ 1081.200 Commencement of proceeding and contents of notice of charges.

(a) *Commencement of proceeding.* A proceeding governed by this part is commenced by filing of a notice of charges by the Bureau in accordance with § 1081.111 of this part. The notice of charges must be served by the Bureau upon the respondent in accordance with § 1081.113(d)(1) of this part.

(b) *Contents of a notice of charges.* The notice of charges must set forth:

(1) The legal authority for the proceeding and for the Bureau's jurisdiction over the proceeding;

(2) A statement of the matters of fact and law showing that the Bureau is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time and place of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) That the answer shall be filed and served in accordance with subpart A of this part; and

(7) The docket number for the adjudication proceeding.

(c) *Publication of notice of charges.* Unless otherwise ordered by the Bureau, the notice of charges shall be given general circulation by release to the public, by publication on the Bureau's Web site and, where directed by the hearing officer or the Director, by publication in the **Federal Register.** The Bureau may publish any notice of charges after 10 days from the date of service except if there is a pending motion for a protective order filed pursuant to § 1081.119.

(d) *Voluntary dismissal.*

(1) Without an order. The Bureau may voluntarily dismiss an adjudication proceeding without an order entered by a hearing officer by filing either:

(i) A notice of dismissal before the respondent(s) serves an answer; or

(ii) A stipulation of dismissal signed by all parties who have appeared.

(2) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice, and does not operate as an adjudication on the merits.

§ 1081.201 Answer.

(a) *When.* Within 14 days of service of the notice of charges, respondent shall file an answer as designated in the notice of charges.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice of charges and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice of charges which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice of charges that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *If the allegations of the complaint are admitted.* If the respondent elects not to contest the allegations of fact set forth in the notice of charges, the answer shall consist of a statement that the respondent admits all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the notice of charges, and together with the notice of charges will provide a record basis on which the hearing officer shall issue a recommended decision containing appropriate findings and conclusions and a proposed order disposing of the proceeding. In such an answer, the respondent may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 1081.305.

(d) *Default.*

(1) Failure of a respondent to file an answer within the time provided shall be deemed to constitute a waiver of the respondent's right to appear and contest the allegations of the notice of charges and to authorize the hearing officer, without further notice to the respondent, to find the facts to be as alleged in the notice of charges and to enter a recommended decision containing appropriate findings and conclusions. In such cases, respondent shall have no right to appeal pursuant to § 1081.402, but must instead proceed pursuant to paragraph (d)(2) of this section.

(2) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the recommended decision, or the Director, at any time, may for good cause shown set aside a default.

§ 1081.202 Amended pleadings.

(a) *Amendments.* The notice of charges or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice of charges within the time remaining for the

respondent's answer to the original notice of charges, or within 10 days after service of the amended notice of charges, whichever period is longer, unless the hearing officer orders otherwise for good cause.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice of charges or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice of charges or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice of charges or answer, the hearing officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action and the objecting party fails to satisfy the hearing officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The hearing officer may grant a continuance to enable the objecting party to meet such evidence.

§ 1081.203 Scheduling conference.

(a) *Meeting of the parties before scheduling conference.* As early as practicable before the scheduling conference described in paragraph (b) of this section, counsel for the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case. The parties shall also discuss and agree, if possible, on the matters set forth in paragraph (b) of this section.

(b) *Scheduling conference.* Within 20 days of service of the notice of charges or such other time as the parties and hearing officer may agree, the hearing officer shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a *scheduling conference.* At the scheduling conference, counsel for the parties shall be prepared to address:

(1) Determination of the dates and location of the hearing, including, in proceedings under section 1053(b) of the Act, whether the hearing should commence later than 60 days after service of the notice of charges;

(2) Simplification and clarification of the issues;

(3) Amendments to pleadings;

(4) Settlement of any or all issues;

(5) Production of documents as set forth in § 1081.206 and of witness statements as set forth in § 1081.207, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 1081.208;

(6) Whether or not the parties intend to move for summary disposition of any or all issues;

(7) Whether the parties intend to seek the deposition of witnesses pursuant to § 1081.209;

(8) A schedule for the exchange of expert reports and the taking of expert depositions, if any; and

(9) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The hearing officer, in his or her discretion, may require that a scheduling conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(d) *Scheduling order.* At or within five days following the conclusion of the scheduling conference, the hearing officer shall serve on each party an order setting forth the date and location of the hearing and any agreements reached and any procedural determinations made.

(e) *Failure to appear; default.* Any person who is named in a notice of charges as a person against whom findings may be made or sanctions imposed and who fails to appear, in person or through counsel, at a scheduling conference of which he or she has been duly notified may be deemed in default pursuant to § 1081.201(d)(1). A party may make a motion to set aside a default pursuant to § 1081.201(d)(2).

(f) *Public access.* The scheduling conference shall be public unless the hearing officer determines, based on the standard set forth in § 1081.119(b) of this part, that the conference (or any part thereof) shall be closed to the public.

§ 1081.204 Consolidation and severance of actions.

(a) *Consolidation.*

(1) On the motion of any party, or on the hearing officer's own motion, the hearing officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule may be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The hearing officer may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the hearing officer finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 1081.205 Non-dispositive motions.

(a) *Scope.* This section applies to all motions except motions to dismiss and motions for summary disposition. Non-dispositive motions filed pursuant to other sections of this part shall comply with any specific requirements of that section and this section to the extent these requirements are not inconsistent.

(b) *In writing.*

(1) Unless made during a hearing or conference, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the hearing officer. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(c) *Oral motions.* The Director or the hearing officer, as appropriate, may order that an oral motion be submitted in writing.

(d) *Responses and replies.*

(1) Except as otherwise provided herein, within 10 days after service of any written motion, or within such other period of time as may be established by the hearing officer or the Director, as appropriate, any party may file a written response to a motion. The hearing officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) Reply briefs, if any, may be filed within three days after service of the response.

(3) The failure of a party to oppose a written motion or an oral motion made on the record is deemed consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Length limitations.* No motion subject to this section (together with the

brief in support of the motion) or brief in response to the motion shall exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, and exhibits. No reply brief shall exceed six pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, and exhibits. Motions for leave to file motions and briefs in excess of these limitations are disfavored.

(f) *Meet and confer requirements.* Each motion filed under this section shall be accompanied by a signed statement representing that counsel for the moving party has conferred or made a good faith effort to confer with opposing counsel in a good faith effort to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved.

(g) *Ruling on non-dispositive motions.* Unless otherwise provided by a relevant rule, a hearing officer shall rule on non-dispositive motions. Such ruling shall be issued within 14 days after the expiration of the time period allowed for the filing of all motions papers authorized by this section. The Director, for good cause, may extend the time allowed for a ruling.

(h) *Proceedings not stayed.* A motion under consideration by the Director or the hearing officer shall not stay proceedings before the hearing officer unless the Director or the hearing officer, as appropriate, so orders.

(i) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

§ 1081.206 Availability of documents for inspection and copying.

For purposes of this section, the term *documents* shall include any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(a) *Documents to be available for inspection and copying.*

(1) Unless otherwise provided by this section, or by order of the hearing officer, the Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division of Enforcement prior to the institution of proceedings, from persons not employed by the Bureau, in connection with the investigation leading to the institution of proceedings. Such documents shall include:

(i) Any documents turned over in response to civil investigative demands or other written requests to provide documents or to be interviewed issued by the Division of Enforcement;

(ii) All transcripts and transcript exhibits; and

(iii) Any other documents obtained from persons not employed by the Bureau.

(2) In addition, the Division of Enforcement shall make available for inspection and copying by any party:

(i) Each civil investigative demand or other written request to provide documents or to be interviewed issued by the Division of Enforcement in connection with the investigation leading to the institution of proceedings; and

(ii) Any final examination or inspection reports prepared by any other Division of the Bureau if the Division of Enforcement either intends to introduce any such report into evidence or to use any such report to refresh the recollection of, or impeach, any witness.

(3) Nothing in paragraph (a) of this section shall limit the right of the Division of Enforcement to make available any other document, or shall limit the right of a respondent to seek access to or production pursuant to subpoena of any other document, or shall limit the authority of the hearing officer to order the production of any document pursuant to subpoena.

(4) Nothing in paragraph (a) of this section shall require the Division of Enforcement to produce a final examination or inspection report prepared by any other Division of the Bureau to a respondent who is not the subject of that report.

(b) *Documents that may be withheld.*

(1) The Division of Enforcement may withhold a document if:

(i) The document is privileged;

(ii) The document is an internal memorandum, note or writing prepared by a person employed by the Bureau or another government agency, other than an examination or supervision report as specified in paragraph (a)(2)(ii) of this section, or would otherwise be subject to the work product doctrine and will not be offered in evidence;

(iii) The document would disclose the identity of a confidential source;

(iv) Applicable law prohibits the disclosure of the document; or

(v) The hearing officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

(2) Nothing in paragraph (b)(1) of this section authorizes the Division of Enforcement in connection with an adjudication proceeding to withhold material exculpatory evidence in the possession of the Division that would otherwise be required to be produced pursuant to paragraph (a) of this section.

(c) *Withheld document list.* The hearing officer may require the Division of Enforcement to submit for review a list of documents or categories of documents withheld pursuant to paragraphs (b)(1)(i) through (b)(1)(iv) of this section or to submit any document withheld, and may determine whether any such document should be made available for inspection and copying. When similar documents are withheld pursuant to paragraphs (b)(1)(i) through (b)(1)(iv) of this section, those documents may be identified by category instead of by individual document. The hearing officer retains discretion to determine when an identification by category is insufficient.

(d) *Timing of inspection and copying.* Unless otherwise ordered by the hearing officer, the Division of Enforcement shall commence making documents available to a respondent for inspection and copying pursuant to this section no later than seven days after service of the notice of charges.

(e) *Place of inspection and copying.* Documents subject to inspection and copying pursuant to this section shall be made available to the respondent for inspection and copying at the Bureau office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. A respondent shall not be given custody of the documents or leave to remove the documents from the Bureau's offices pursuant to the requirements of this section other than by written agreement of the Division of Enforcement. Such agreement shall specify the documents subject to the agreement, the date they shall be returned and such other terms or conditions as are appropriate to provide for the safekeeping of the documents.

(f) *Copying costs and procedures.* The respondent may obtain a photocopy of any documents made available for inspection or, at the discretion of the Division of Enforcement, electronic copies of such documents. The respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made by the Division of Enforcement at the request

of the respondent will be at the rate charged pursuant to part 1070. The respondent shall be given access to the documents at the Bureau's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

(g) *Duty to supplement.* If the Division of Enforcement acquires information that it intends to rely upon at a hearing after making its disclosures under part (a)(1) of this section, the Division of Enforcement shall supplement its disclosures to include such information.

(h) *Failure to make documents available—harmless error.* In the event that a document required to be made available to a respondent pursuant to this section is not made available by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to make the document available was not harmless error.

(i) *Disclosure of privileged or protected information or communications; scope of waiver; obligations of receiving party.*

(1)(i) The disclosure of privileged or protected information or communications by any party during an adjudication proceeding shall not operate as a waiver if:

(A) The disclosure was inadvertent;

(B) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

(C) The holder promptly took reasonable steps to rectify the error, including notifying any party that received the information or communication of the claim and the basis for it.

(ii) After being notified, the receiving party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the hearing officer under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(2) The disclosure of privileged or protected information or communications by any party during an adjudication proceeding shall waive the privilege or protection as to undisclosed information or communications only if:

(i) The waiver is intentional;

(ii) The disclosed and undisclosed information or communications concern the same subject matter; and

(iii) They ought in fairness to be considered together.

§ 1081.207 Production of witness statements.

(a) *Availability.* Any respondent may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500, if the adjudication proceeding were a criminal proceeding. For purposes of this section, the term ''statement'' shall have the meaning set forth in 18 U.S.C. 3500(e). Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) *Failure to produce—harmless error.* In the event that a statement required to be made available to a respondent pursuant to this section is not made available by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to make the statement available was not harmless error.

§ 1081.208 Subpoenas.

(a) *Availability.* In connection with any hearing ordered by the hearing officer, a party may request the issuance of one or more subpoenas requiring the attendance and testimony of witnesses at the designated time and place of the hearing, or the production of documentary or other tangible evidence returnable at any designated time or place.

(b) *Procedure.* Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing, and filed and served on each party pursuant to subpart A of this part. The request must contain a proposed subpoena and a brief statement showing the general relevance and reasonableness of the scope of testimony or documents sought.

(c) *Signing may be delegated.* A hearing officer may authorize issuance of a subpoena, and may delegate the manual signing of the subpoena to any other person authorized to issue subpoenas.

(d) *Standards for issuance.* The hearing officer shall promptly issue any subpoena requested pursuant to this section. However, where it appears to the hearing officer that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show further the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the hearing officer determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the hearing officer may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(e) *Service.* Upon issuance by the hearing officer, the party making the request shall serve the subpoena on the person named in the subpoena and on each party in accordance with § 1081.113(c). Subpoenas may be served in any state, on any person or company doing business in any state, or as otherwise permitted by law.

(f) *Tender of fees required.* When a subpoena compelling the attendance of a person at a hearing is issued at the request of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by § 1081.116 of this part.

(g) *Motion to quash or modify.*

(1) Procedure. Any person to whom a subpoena is directed, or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena, or any party may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, move that the subpoena be quashed or modified. Such motion shall be filed and served on all parties pursuant to subpart A of this part. Notwithstanding § 1081.205, the party on whose behalf the subpoena was issued or Enforcement Counsel may, within five days of service of the motion, file a response to the motion. Reply briefs are not permitted unless requested by the hearing officer. Filing a motion to modify a subpoena does not stay the movant's obligation to comply with those portions of the subpoena that the person has not sought to modify.

(2) Standards governing motion to quash or modify. If compliance with the subpoena would be unreasonable,

oppressive, or unduly burdensome, the hearing officer shall quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(h) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the hearing officer which directs compliance with all or any portion of a subpoena, the Bureau may, on its own motion or at the request of the party on whose behalf the subpoena was issued, apply to an appropriate United States district court, in the name of the Bureau but on relation of such party, for an order requiring compliance with so much of the subpoena as the hearing officer has not quashed or modified, unless, in the judgment of the General Counsel, the enforcement of such subpoena would be inconsistent with law and the policies of the Act. Failure to request the Bureau to seek enforcement of a subpoena constitutes a waiver of any claim of prejudice predicated upon the unavailability of the testimony or evidence sought.

§ 1081.209 Deposition of witness unavailable for hearing.

(a) *General rules.*

(1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may request in accordance with the procedures set forth in this section that the hearing officer issue a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The hearing officer may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness, or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) In addition to making a showing as required by paragraph (a)(1) of this section, the request for a deposition subpoena must contain a proposed deposition subpoena and a brief statement showing the general relevance and reasonableness of the scope of testimony and documents sought, and the time and place for taking the deposition. Any request to record the deposition by audio-visual means must be made in the request for a deposition subpoena.

(3) Any requested deposition subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the hearing officer on his or her own motion requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued. However, where it appears to the hearing officer that the deposition subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the deposition subpoena, require the person seeking the deposition subpoena to show further the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the hearing officer determines that the deposition subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the deposition subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the hearing officer may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(4) Unless the hearing officer orders otherwise, no deposition under this section shall be taken on fewer than 14 days' notice to the witness and all parties.

(b) *Procedure.* Unless made on the record at a hearing, requests for issuance of a deposition subpoena shall be made in writing, and filed and served on each party pursuant to subpart A of this part.

(c) *Signing may be delegated.* A hearing officer may authorize issuance of a deposition subpoena, and may delegate the manual signing of the deposition subpoena to any other person authorized to issue subpoenas.

(d) *Service.* Upon issuance by the hearing officer, the party making the request shall serve the subpoena on the person named in the subpoena and on each party in accordance with § 1081.113(c). Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(e) *Tender of fees required.* When a subpoena compelling the attendance of a person at a deposition is issued at the request of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by § 1081.116 of this part.

(f) *Motion to quash or modify.*

(1) *Procedure.* Any person to whom a deposition subpoena is directed, or who is an owner, creator or the subject of the documents that are to be produced pursuant to a deposition subpoena, or any party may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, move that the deposition subpoena be quashed or modified. Such motion must include a statement of the basis for the motion to quash or modify the deposition subpoena, and shall be filed and served on all parties pursuant to subpart A of this part. Notwithstanding § 1081.205, the party on whose behalf the deposition subpoena was issued or Enforcement Counsel may, within five days of service of the motion, file a response to the motion. Reply briefs are not permitted unless requested by the hearing officer.

(2) *Standards governing motion to quash or modify.* If compliance with the deposition subpoena would be unreasonable, oppressive or unduly burdensome, or the deposition subpoena does not meet the requirements set forth in paragraph (a)(1) of this section, the hearing officer shall quash or modify the deposition subpoena, or may order return of the deposition subpoena only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the deposition subpoena was issued shall make reasonable compensation to the person to whom the deposition subpoena was addressed for the cost of copying or transporting evidence to the place for return of the deposition subpoena.

(g) *Procedure upon deposition.*

(1) Depositions shall be taken before any person before whom a deposition may be taken pursuant to the Federal Rules of Civil Procedure (the ''deposition officer'').

(2) The witness being deposed may have an attorney present during the deposition.

(3) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the

right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Objections to questions of evidence shall be noted by the deposition officer upon the deposition, but a deposition officer other than the hearing officer shall not have the power to decide on the competency, materiality, or relevance of evidence. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(4) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(5) The original deposition and exhibits shall be filed with the Executive Secretary. The cost of the transcript shall be paid by the party requesting the deposition. A copy of the deposition shall be available to the deponent and each party for purchase at prescribed rates.

(h) *Enforcing subpoenas.* Any party may move before the hearing officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition. If a subpoenaed person fails to comply with any order of the hearing officer which directs compliance with all or any portion of a deposition subpoena under this section, the Bureau may, on its own motion or at the request of the party on whose behalf the subpoena was issued, apply to an appropriate United States district court, in the name of the Bureau but on relation of such party, for an order requiring compliance with so much of the subpoena as the hearing officer has not quashed or modified, unless, in the judgment of the General Counsel, the enforcement of such subpoena would be inconsistent with law and the policies of the Act. Failure to request the Bureau to seek enforcement of a subpoena constitutes a waiver of any claim of prejudice predicated upon the unavailability of the testimony or evidence sought.

§ 1081.210 Expert discovery.

(a) At a date set by the hearing officer at the scheduling conference, each party shall serve the other with a report prepared by each of its expert witnesses. Each party shall serve the other parties with a list of any rebuttal expert witnesses and a rebuttal report prepared by each such witness not later than 28 days after the deadline for service of expert reports, unless another date is set by the hearing officer. A rebuttal report shall be limited to rebuttal of matters set forth in the expert report for which it is offered in rebuttal. If material outside the scope of fair rebuttal is presented, a party may file a motion not later than five days after the deadline for service of rebuttal reports, seeking appropriate relief with the hearing officer, including striking all or part of the report, leave to submit a surrebuttal report by the party's own experts, or leave to call a surrebuttal witness and to submit a surrebuttal report by that witness.

(b) No party may call an expert witness at the hearing unless he or she has been listed and has provided reports as required by this section, unless otherwise directed by the hearing officer at a scheduling conference. Each side will be limited to calling at the hearing five expert witnesses, including any rebuttal or surrebuttal expert witnesses. A party may file a motion seeking leave to call additional expert witnesses due to extraordinary circumstances.

(c) Each report shall be signed by the expert and contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data, materials, or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored or co-authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified or sought to testify as an expert at trial or by deposition within the preceding four years. A rebuttal or surrebuttal report need not include any information already included in the initial report of the witness.

(d) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Unless otherwise ordered by the hearing officer, a deposition of any expert witness shall be conducted after the disclosure of a report prepared by the witness in accordance with paragraph (a) of this section, and at least seven days prior to the deadline for submission of rebuttal expert reports. A deposition of an expert witness shall be completed no later than 14 days before the hearing unless otherwise ordered by the hearing officer. No expert deposition shall exceed 8 hours on the record, absent agreement of the parties or an order of the hearing officer for good cause shown. Expert depositions shall be conducted pursuant to the procedures set forth in § 1081.209.

(e) The hearing officer shall have the discretion to dispense with the requirement of expert discovery in appropriate cases.

§ 1081.211 Interlocutory review.

(a) *Availability.* The Director may, at any time, direct that any matter be submitted to him or her for review. Subject to paragraph (c) of this section, the hearing officer may, on his or her own motion or on the motion of any party, certify any matter for interlocutory review by the Director. This section is the exclusive remedy for review of a hearing officer's ruling or order prior to the Director's consideration of the entire proceeding.

(b) *Procedure.* Any party's motion for certification of a ruling or order for interlocutory review shall be filed with the hearing officer within five days of service of the ruling or order, shall specify the ruling or order or parts thereof for which interlocutory review is sought, shall attach any other portions of the record on which the moving party relies, and shall otherwise comply with § 1081.205. Notwithstanding § 1081.205, any response to such a motion must be filed within three days of service of the motion. The hearing officer shall issue a ruling on the motion within five days of the deadline for filing a response.

(c) *Certification process.* Unless the Director directs otherwise, a ruling or order may not be submitted to the Director for interlocutory review unless the hearing officer, upon the hearing officer's motion or upon the motion of a party, certifies the ruling or order in writing. The hearing officer shall not certify a ruling or order unless:

(1) The ruling or order would compel testimony of Bureau officers or employees, or those from another governmental agency, or the production of documentary evidence in the custody of the Bureau or another governmental agency;

(2) The ruling or order involves a motion for disqualification of the hearing officer pursuant to § 1081.105(c)(2) of this part;

(3) The ruling or order suspended or barred an individual from appearing before the Bureau pursuant to § 1081.107(c) of this part; or

(4) Upon motion by a party, the hearing officer is of the opinion that:

(i) The ruling or order involves a controlling question of law as to which

there is substantial ground for difference of opinion; and

(ii) An immediate review of the ruling or order is likely to materially advance the completion of the proceeding or subsequent review will be an inadequate remedy.

(d) *Interlocutory review.* A party whose motion for certification has been denied by the hearing officer may petition the Director for interlocutory review.

(e) *Director review.* The Director shall determine whether or not to review a ruling or order certified under this section or the subject of a petition for interlocutory review. Interlocutory review is disfavored, and the Director will grant a petition to review a hearing officer ruling or order prior to his or her consideration of a recommended decision only in extraordinary circumstances. The Director may decline to review a ruling or order certified by a hearing officer pursuant to paragraph (c) of this section or the petition of a party who has been denied certification if he or she determines that interlocutory review is not warranted or appropriate under the circumstances, in which case he or she may summarily deny the petition. If the Director determines to grant the review, he or she will review the matter and issue his or her ruling and order in an expeditious fashion, consistent with the Bureau's other responsibilities.

(f) *Proceedings not stayed.* The filing of a motion requesting that the hearing officer certify any of his or her prior rulings or orders for interlocutory review or a petition for interlocutory review filed with the Director, and the grant of any such review, shall not stay proceedings before the hearing officer unless he or she, or the Director, shall so order. The Director will not consider a motion for a stay unless the motion shall have first been made to the hearing officer.

§ 1081.212 Dispositive motions.

(a) *Dispositive motions.* This section governs the filing of motions to dismiss and motions for summary disposition. The filing of any such motion does not obviate a party's obligation to file an answer or take any other action required by this part or by an order of the hearing officer, unless expressly so provided by the hearing officer.

(b) *Motions to dismiss.* A respondent may file a motion to dismiss asserting that, even assuming the truth of the facts alleged in the notice of charges, it is entitled to dismissal as a matter of law.

(c) *Motion for summary disposition.* A party may make a motion for summary disposition asserting that the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(d) *Filing of motions for summary disposition and responses.*

(1) After a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying pursuant to § 1081.206, any party may move for summary disposition in its favor of all or any part of the proceeding.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as may be submitted in support of a motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(3) Any affidavit or declaration submitted in support of or in opposition to a motion for summary disposition shall set forth such facts as would be admissible in evidence, shall show affirmatively that the affiant is competent to testify to the matters stated therein, and must be signed under oath and penalty of perjury.

(e) *Page limitations for dispositive motions.* A motion to dismiss or for summary disposition, together with any brief in support of the motion (exclusive of any declarations, affidavits, or attachments) shall not exceed 35 pages in length. Motions for extensions of this length limitation are disfavored.

(f) *Opposition and reply response time and page limitation.* Any party, within 20 days after service of a dispositive motion, or within such time period as allowed by the hearing officer, may file a response to such motion. The length limitations set forth in paragraph (e) of this section shall also apply to such responses. Any reply brief filed in response to an opposition to a dispositive motion shall be filed within five days after service of the opposition. Reply briefs shall not exceed 10 pages.

(g) *Oral argument.* At the request of any party or on his or her own motion, the hearing officer may hear oral argument on a dispositive motion.

(h) *Decision on motion.* Within 30 days following the expiration of the time for filing all responses and replies to any dispositive motion, the hearing officer shall determine whether the motion shall be granted. If the hearing officer determines that dismissal or summary disposition is warranted, he or she shall issue a recommended decision granting the motion. If the hearing officer finds that no party is entitled to dismissal or summary disposition, he or she shall make a ruling denying the motion. If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

§ 1081.213 Partial summary disposition.

If on a motion for summary disposition under § 1081.212 a decision is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the hearing officer shall issue an order specifying the facts that appear without substantial controversy and directing further proceedings in the action. The facts so specified shall be deemed established.

§ 1081.214 Prehearing conferences.

(a) Prehearing conferences. The hearing officer may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference for further discussion of the issues outlined in § 1081.203, or for discussion of any additional matters that in the view of the hearing officer will aid in an orderly disposition of the proceeding, including but not limited to:

(1) Identification of potential witnesses and limitation on the number of witnesses;

(2) The exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits, and any other materials;

(3) Stipulations, admissions of fact, and the contents, authenticity, and admissibility into evidence of documents;

(4) Matters of which official notice may be taken; and

(5) Whether the parties intend to introduce prior sworn statements of witnesses as set forth in § 1081.303(h).

(b) *Transcript.* The hearing officer, in his or her discretion, may require that a prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(c) *Public access.* Any prehearing conferences shall be public unless the hearing officer determines, based on the standard set forth in § 1081.119(b) of this part, that the conference (or any part thereof) shall be closed to the public.

§ 1081.215 Prehearing submissions.

(a) Within the time set by the hearing officer, but in no case later than 10 days before the start of the hearing, each party shall serve on every other party:

(1) A prehearing statement, which shall include an outline or narrative summary of its case or defense, and the legal theories upon which it will rely;

(2) A final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) Any prior sworn statements that a party intends to admit into evidence pursuant to § 1081.303(h);

(4) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(5) Any stipulations of fact or liability.

(b) *Expert witnesses.* Each party who intends to call an expert witness shall also serve, in addition to the information required by paragraph (a)(2) of this section, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given or sought to give expert testimony at trial or by deposition within the preceding four years, and a list of publications authored or co-authored by the expert within the preceding 10 years, to the extent such information has not already been provided pursuant to § 1081.210.

(c) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 1081.216 Amicus participation.

(a) *Availability.* An amicus brief may be filed only if:

(1) A motion for leave to file the brief has been granted;

(2) The brief is accompanied by written consent of all parties;

(3) The brief is filed at the request of the Director or the hearing officer, as appropriate; or

(4) The brief is presented by the United States or an officer or agency thereof, or by a state or a political subdivision thereof.

(b) *Procedure.* An amicus brief may be filed conditionally with the motion for leave. The motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support, unless the Director or hearing officer, as appropriate, for good cause shown, grants leave for a later filing. In the event that a later filing is allowed, the order granting leave to file shall specify when an opposing party may reply to the brief.

(c) *Motions.* A motion for leave to file an amicus brief shall be subject to § 1081.205.

(d) *Oral argument.* An amicus curiae may move to present oral argument at any hearing before the hearing officer, but such motions will be granted only for extraordinary reasons.

Subpart C—Hearings

§ 1081.300 Public hearings.

All hearings in adjudication proceedings shall be public unless a confidentiality order is entered by the hearing officer pursuant to § 1081.119 or unless otherwise ordered by the Director on the grounds that holding an open hearing would be contrary to the public interest.

§ 1081.301 Failure to appear.

Failure of a respondent to appear in person or by a duly authorized counsel at the hearing constitutes a waiver of respondent's right to a hearing and may be deemed an admission of the facts as alleged and consent to the relief sought in the notice of charges. Without further proceedings or notice to the respondent, the hearing officer shall file a recommended decision containing findings of fact and addressing the relief sought in the notice of charges.

§ 1081.302 Conduct of hearings.

All hearings shall be conducted in a fair, impartial, expeditious, and orderly manner. Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the hearing officer, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree, the hearing officer shall fix the order.

§ 1081.303 Evidence.

(a) *Burden of proof.* Enforcement Counsel shall have the burden of proof of the ultimate issue(s) of the Bureau's claims at the hearing.

(b) *Admissibility.*

(1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law. Irrelevant, immaterial, and unreliable evidence shall be excluded.

(2) Evidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues; if the evidence would be misleading; or based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) Evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair. Hearsay is a statement, other than one made by the declarant while testifying at the hearing, offered in evidence to prove the truth of the matter asserted. If otherwise meeting the standards for admissibility described in this section, transcripts of depositions, investigational hearings, prior testimony in Bureau or other proceedings, and any other form of hearsay shall be admissible and shall not be excluded solely on the ground that they are or contain hearsay.

(4) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this part. Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this part solely on that basis.

(c) *Official notice.* Official notice may be taken of any material fact that is not subject to reasonable dispute in that it is either generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. If official notice is requested or is taken of a

material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to disprove such noticed fact.

(d) *Documents.*

(1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (b) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by a prudential regulator, as that term is defined in section 1002(24) of the Act, or by a state regulatory agency, is presumptively admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the hearing officer's discretion, be used with or without being admitted into evidence.

(4) As respondents are in the best position to determine the nature of documents generated by such respondents and which come from their own files, the burden of proof is on the respondent to introduce evidence to rebut a presumption that such documents are authentic and kept in the regular course of business.

(e) *Objections.*

(1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Rejected exhibits, adequately marked for identification, shall be retained pursuant to § 1081.306(b) so as to be available for consideration by any reviewing authority.

(3) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(f) *Stipulations.*

(1) The parties may, at any stage of the proceeding, stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(2) Unless the hearing officer directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(g) *Presentation of evidence.*

(1) A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

(2) A party is entitled to present its case or defense by sworn oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the hearing officer, may be required for a full and true disclosure of the facts.

(3) An adverse party, or an officer, agent, or employee thereof, and any witness who appears to be hostile, unwilling, or evasive, may be interrogated by leading questions and may also be contradicted and impeached by the party calling him or her.

(4) The hearing officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(i) Make the interrogation and presentation effective for the ascertainment of the truth;

(ii) Avoid needless consumption of time; and

(iii) Protect witnesses from harassment or undue embarrassment.

(5) The hearing officer may permit a witness to appear at a hearing via video conference or telephone for good cause shown.

(h) *Introducing prior sworn statements of witnesses into the record.* At a hearing, any party wishing to introduce a prior, sworn statement of a witness, not a party, otherwise admissible in the proceeding, may make a motion setting forth the reasons therefore. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

(1) The witness is dead;

(2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) The party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or

(5) In the discretion of the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

§ 1081.304 Record of the hearing.

(a) *Reporting and transcription.* Hearings shall be stenographically reported and transcribed under the supervision of the hearing officer, and the original transcript shall be a part of the record and the sole official transcript. The live oral testimony of each witness may be video recorded digitally, in which case the video recording and the written transcript of the testimony shall be made part of the record. Copies of transcripts shall be available from the reporter at prescribed rates.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections ordered by the hearing officer or agreed to in a written stipulation signed by all counsel and parties not represented by counsel, and approved by the hearing officer, shall be included in the record, and such stipulations, except to the extent they are capricious or without substance, shall be approved by the hearing officer. Corrections shall not be ordered by the hearing officer except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the official reporter by furnishing substitute type pages, under the usual certificate of the reporter, for insertion in the official record. The original uncorrected pages shall be retained in the files of the Bureau.

(c) *Closing of the hearing record.* Upon completion of the hearing, the hearing officer shall issue an order closing the hearing record after giving the parties three days to determine if the record is complete or needs to be supplemented. The hearing officer shall retain the discretion to permit or order correction of the record as provided in paragraph (b) of this section.

§ 1081.305 Post-hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.*

(1) Using the same method of service for each party, the hearing officer shall serve notice upon each party that the certified transcript, together with all

hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed promptly after that filing. Any party may file with the hearing officer proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days following service of this notice by the hearing officer or within such longer period as may be ordered by the hearing officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(b) *Responsive briefs.* Responsive briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Responsive briefs must be strictly limited to responding to matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a responsive brief. Unless directed by the hearing officer, reply briefs are not permitted.

(c) *Order of filing.* The hearing officer shall not order the filing by any party of any post-hearing brief or responsive brief in advance of the other party's filing of its post-hearing brief or responsive brief.

§ 1081.306 Record in proceedings before hearing officer; retention of documents; copies.

(a) *Contents of the record.* The record of the proceeding shall consist of:

(1) The notice of charges, the answer, and any amendments thereto;

(2) Each motion, submission, or other paper filed in the proceedings, and any amendments and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony, and any document or other item admitted into evidence;

(4) Any transcript of a conference or hearing before the hearing officer;

(5) Any amicus briefs filed pursuant to § 1081.216;

(6) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under § 1081.105(c), each affidavit or transcript of testimony taken and the decision made in connection with the request;

(7) All motions, briefs, and other papers filed on interlocutory appeal;

(8) All proposed findings and conclusions;

(9) Each written order issued by the hearing officer or Director; and

(10) Any other document or item accepted into the record by the hearing officer.

(b) *Retention of documents not admitted.* Any document offered into evidence but excluded shall not be considered part of the record. The Executive Secretary shall retain any such document until the later of the date upon which an order by the Director ending the proceeding becomes final and not appealable, or upon the conclusion of any judicial review of the Director's order.

(c) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this section.

Subpart D—Decision and Appeals

§ 1081.400 Recommended decision of the hearing officer.

(a) *Time period for filing recommended decision.* Subject to paragraph (b) of this section, the hearing officer shall file a recommended decision no later than 90 days after the deadline for filing post-hearing responsive briefs pursuant to § 1081.305(b) and in no event later than 300 days after filing of the notice of charges.

(b) *Extension of deadlines.* In the event the hearing officer presiding over the proceeding determines that it will not be possible to issue the recommended decision within the time periods specified in paragraph (a) of this section, the hearing officer shall submit a written request to the Director for an extension of the time period for filing the recommended decision. This request must be filed no later than 30 days prior to the expiration of the time for issuance of a recommended decision. The request will be served on all parties in the proceeding, who may file with the Director briefs in support of or in opposition to the request. Any such briefs must be filed within three days of service of the hearing officer's request and shall not exceed five pages. If the Director determines that additional time is necessary or appropriate in the public interest, the Director shall issue an order extending the time period for filing the recommended decision.

(c) *Content.*

(1) A recommended decision shall be based on a consideration of the whole record relevant to the issues decided, and shall be supported by reliable, probative, and substantial evidence. The recommended decision shall include a statement of findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law, as well as the reasons or basis therefore, as to all the material issues of fact, law, or discretion presented on the record and the appropriate order, sanction, relief or denial thereof. The recommended decision shall also state that a notice of appeal may be filed within 10 days after service of the recommended decision and include a statement that, unless a party timely files and perfects a notice of appeal of the recommended decision, the Director may adopt the recommended decision as the final decision and order of the Bureau without further opportunity for briefing or argument.

(2) Consistent with paragraph (a) of this section, when more than one claim for relief is presented in an adjudication proceeding, or when multiple parties are involved, the hearing officer may direct the entry of a recommended decision as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of a recommended decision.

(d) *By whom made.* The recommended decision shall be made and filed by the hearing officer who presided over the hearings, except when he or she shall have become unavailable to the Bureau.

(e) *Reopening of proceeding by hearing officer; termination of jurisdiction.*

(1) At any time from the close of the hearing record pursuant to § 1081.304(c) until the filing of his or her recommended decision, a hearing officer may reopen the proceeding for the receipt of further evidence for good cause shown.

(2) Except for the correction of clerical errors or pursuant to an order of remand from the Director, the jurisdiction of the hearing officer is terminated upon the filing of his or her recommended decision with respect to those issues decided pursuant to paragraph (c) of this section.

(f) *Filing, service, and publication.* The hearing officer shall file the recommended decision with the Executive Secretary. The Executive Secretary shall promptly serve the recommended decision upon the parties.

§ 1081.401 Transmission of documents to Director; record index; certification.

(a) *Filing of index.* At the same time the hearing officer files the recommended decision, the hearing officer shall furnish to the Director a

certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for each exhibit introduced and admitted into evidence and each exhibit introduced but not admitted into evidence.

(b) *Final transmittal of record items to the Executive Secretary.* After the close of the hearing, the hearing officer shall transmit to the Executive Secretary originals of any motions, exhibits or any other documents filed with, or accepted into evidence by, the hearing officer, or any other portions of the record that have not already been transmitted to the Executive Secretary.

§ 1081.402 Notice of appeal; review by the Director.

(a) *Notice of appeal.*

(1) *Filing.* Any party may file exceptions to the recommended decision of the hearing officer by filing a notice of appeal with the Executive Secretary within 10 days after service of the recommended decision. The notice shall specify the party or parties against whom the appeal is taken and shall designate the recommended decision or part thereof appealed from. If a timely notice of appeal is filed by a party, any other party may thereafter file a notice of appeal within five days after service of the first notice, or within 10 days after service of the recommended decision, whichever period expires last.

(2) *Perfecting a notice of appeal.* Any party filing a notice of appeal must perfect its appeal by filing its opening appeal brief within 30 days of service of the recommended decision. Any party may respond to the opening appeal brief by filing an answering brief within 30 days of service of the opening brief. Any party may file a reply to an answering brief within seven days of service of the answering brief. These briefs must conform to the requirements of § 1081.403.

(b) *Director review other than pursuant to an appeal.* In the event no party appeals the recommended decision, the Director shall, within 40 days after the date of service of the recommended decision, either issue a final decision and order adopting the recommended decision, or order further briefing regarding any portion of the recommended decision. The Director's order for further briefing shall set forth the scope of review and the issues that will be considered and will make provision for the filing of briefs in accordance with the timelines set forth in paragraph (a)(2) of this section (except that that opening briefs shall be due within 30 days of service of the order of review) if deemed appropriate by the Director.

(c) *Exhaustion of administrative remedies.* Pursuant to 5 U.S.C. 704, a perfected appeal to the Director of a recommended decision pursuant to paragraph (a) of this section is a prerequisite to the seeking of judicial review of a final decision and order, or portion of the final decision and order, adopting the recommended decision..

§ 1081.403 Briefs filed with the Director.

(a) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions, and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in answering briefs of other parties.

(b) *Length limitation.* Except with leave of the Director, opening and answering briefs shall not exceed 30 pages, and reply briefs shall not exceed 15 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, and exhibits. Motions to file briefs in excess of these limitations are disfavored.

§ 1081.404 Oral argument before the Director.

(a) *Availability.* The Director will consider appeals, motions, and other matters properly before him or her on the basis of the papers filed by the parties without oral argument unless the Director determines that the presentation of facts and legal arguments in the briefs and record and decisional process would be significantly aided by oral argument, in which case the Director shall issue an order setting the date on which argument shall be held. A party seeking oral argument shall so indicate on the first page of its opening or answering brief.

(b) *Public arguments; transcription.* All oral arguments shall be public unless otherwise ordered by the Director. Oral arguments before the Director shall be reported stenographically, unless otherwise ordered by the Director. Motions to correct the transcript of oral argument shall be made according to the same procedure provided in § 1081.304(b).

§ 1081.405 Decision of the Director.

(a) Upon appeal from or upon further review of a recommended decision, the Director will consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition, will, to the extent necessary or desirable, exercise all powers which he or she could have exercised if he or she had made the recommended decision. In proceedings before the Director, the record shall consist of all items part of the record below in accordance with § 1081.306; any notices of appeal or order directing review; all briefs, motions, submissions, and other papers filed on appeal or review; and the transcript of any oral argument held. Review by the Director of a recommended decision may be limited to the issues specified in the notice(s) of appeal or the issues, if any, specified in the order directing further briefing. On notice to all parties, however, the Director may, at any time prior to issuance of his or her decision, raise and determine any other matters that he or she deems material, with opportunity for oral or written argument thereon by the parties.

(b) Decisional employees may advise and assist the Director in the consideration and disposition of the case.

(c) In rendering his or her decision, the Director will affirm, adopt, reverse, modify, set aside, or remand for further proceedings the recommended decision and will include in the decision a statement of the reasons or basis for his or her actions and the findings of fact upon which the decision is predicated.

(d) At the expiration of the time permitted for the filing of reply briefs with the Director, the Executive Secretary will notify the parties that the case has been submitted for final Bureau decision. The Director will issue and the Executive Secretary will serve the Director's final decision and order within 90 days after such notice, unless the Director orders that the adjudication proceeding or any aspect thereof be remanded to the hearing officer for further proceedings.

(e) Copies of the final decision and order of the Director shall be served upon each party to the proceeding, upon

other persons required by statute, and, if directed by the Director or required by statute, upon any appropriate state or Federal supervisory authority. The final decision and order will also be published on the Bureau's Web site or as otherwise deemed appropriate by the Bureau.

§ 1081.406 Reconsideration.

Within 14 days after service of the Director's final decision and order, any party may file with the Director a petition for reconsideration, briefly and specifically setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the final decision or final order and upon which the petitioner had no opportunity to argue, in writing or orally, before the Director. No response to a petition for reconsideration shall be filed unless requested by the Director, who will request such response before granting any petition for reconsideration. The filing of a petition for reconsideration shall not operate to stay the effective date of the final decision or order or to toll the running of any statutory period affecting such decision or order unless specifically so ordered by the Director.

§ 1081.407 Effective date; stays pending judicial review.

(a) Other than consent orders, which shall become effective at the time specified therein, an order to cease and desist or for other affirmative action under section 1053(b) of the Act becomes effective at the expiration of 30 days after the date of service pursuant to § 1081.113(d)(2), unless the Director agrees to stay the effectiveness of the Order pursuant to this section.

(b) Any party subject to a final decision and order, other than a consent order, may apply to the Director for a stay of all or part of that order pending judicial review.

(c) A motion for stay shall state the reasons a stay is warranted and the facts relied upon, and shall include supporting affidavits or other sworn statements, and a copy of the relevant portions of the record. The motion shall address the likelihood of the movant's success on appeal, whether the movant will suffer irreparable harm if a stay is not granted, the degree of injury to other parties if a stay is granted, and why the stay is in the public interest.

(d) A motion for stay shall be filed within 30 days of service of the order on the party. Any party opposing the motion may file a response within five days after receipt of the motion. The movant may file a reply brief, limited to new matters raised by the response, within three days after receipt of the response.

(e) The commencement of proceedings for judicial review of a final decision and order of the Director does not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director. The Director may, in his or her discretion, and on such terms as he or she finds just, stay the effectiveness of all or any part of an order pending a final decision on a petition for judicial review of that order.

Dated: July 22, 2011.

Sam Valverde,

Deputy Executive Secretary, Department of the Treasury.

[FR Doc. 2011–19032 Filed 7–25–11; 4:15 pm]

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Part III

Bureau of Consumer Financial Protection

12 CFR Part 1070
Disclosure of Records and Information; Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1070

[Docket No. CFPB–2011–0003]

RIN 3170–AA01

Disclosure of Records and Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: This interim final rule establishes procedures for the public to obtain information from the Bureau of Consumer Financial Protection, under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings. This interim final rule also establishes the CFPB's rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under federal consumer financial law.

DATES: This interim final rule is effective July 28, 2011. Written comments must be submitted by September 26, 2011.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0003,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1801 L Street, NW., Washington, DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036, 202–435–7275.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203). Title X of that law is the Consumer Financial Protection Act of 2010 (the ''Act''), which created the Bureau of Consumer Financial Protection (the ''CFPB''). Pursuant to the provisions of the Act, the CFPB will begin to exercise its authority to regulate the offering and provision of consumer financial products and services under the federal consumer financial laws on July 21, 2011.[1]

In order to establish procedures to facilitate public interaction with the CFPB, the CFPB is issuing this interim final rule. The CFPB invites public comment on all aspects of this interim final rule and will take those comments into account before publishing a final rule.

II. Summary of Interim Final Rule

This interim final rule establishes procedures for the CFPB that are necessary to implement the Freedom of Information Act, 5 U.S.C. 552 (the ''FOIA'') and the Privacy Act of 1974, 5 U.S.C. 552a (the ''Privacy Act''). Various provisions of these statutes either require or authorize federal agencies to promulgate implementing regulations. *See* 5 U.S.C. 552(a)(4)(A)(i); *id.* at 552(a)(6)(B)(iv); *id.* at 552(a)(6)(D)(1); *id.* at 552(a)(6)(E); *id.* at 552a(f); *id.* at 552(k). Pursuant to the Federal Housekeeping Statute, 5 U.S.C. 301 (as interpreted by *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951) and subsequent related case law) and/or the Federal Records Act, 44 U.S.C. ch. 30, the interim final rule also establishes a process by which parties may seek testimony or records from the CFPB for use in litigation and certain other proceedings. Finally, the interim final rule governs the CFPB's treatment of confidential information pursuant to sections 1022 and 1052 of the Act.

A. Summary of Subpart A: General Provisions

Subpart A of part 1070 of the rules sets forth general provisions applicable to the remainder of the part. Section 1070.1 sets forth the CFPB's authorities for issuing its rules, which include provisions of the Act that require or authorize the CFPB to disclose, share, or maintain the confidentiality of certain information that the CFPB obtains from others or generates itself. Section 1070.1 also identifies the purposes of the rules in part 1070.

Section 1070.2 defines terms that are utilized elsewhere in part 1070 of the rules. Several of these terms warrant brief discussion. For example, we intend for our definition of the term ''civil investigative demand material'' in section 1070.2(e) to encompass all types of materials provided to the CFPB in response to a civil investigative demand that the CFPB issues in accordance with section 1052 of the Act. As stated in section 1052 and reiterated in section 1070.2(e) of these rules, civil investigative demand material includes documentary materials, such written reports and answers to questions, tangible things, oral testimony, or any combination thereof. As defined, the term ''civil investigative demand material'' also includes such materials to the extent that a person, through negotiations with the CFPB or otherwise, agrees to provide them to the CFPB voluntarily or in lieu of receiving a civil investigative demand.

Section 1070.2(f) defines the term ''confidential information.'' Confidential information refers to three categories of non-public information—confidential consumer complaint information, confidential investigative information, and confidential supervisory information—that the CFPB shall protect from various types of disclosure in accordance with Consumer Financial Protection Act and other laws. The term also includes other CFPB information that is exempt from disclosure pursuant to one or more of the statutory exemptions to the FOIA.

Section 1070.2(g) defines ''confidential consumer complaint information'' to mean information that the CFPB receives from the public or from other agencies or organizations, or which the CFPB generates through its own efforts pursuant to sections 1013 and 1034 of the Act, that comprises or documents consumer complaints or inquiries concerning financial institutions or consumer financial products and services. The term includes information, such as personally identifiable information, that is protected from public disclosure under the FOIA.

Section 1070.2(h) defines ''confidential investigative information'' to include all manner of materials received, generated, or compiled by the CFPB in the course of its investigative activities, including materials received

[1] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes this interim final rule on behalf of the CFPB.

through the issuance of civil investigative demands. It also includes confidential supervisory information and confidential consumer complaint information to the extent that such materials serve as a basis for or are utilized for purposes of, an investigation. Lastly, the term includes materials that other federal and state agencies provide to the CFPB or create for its use in investigating a possible violation of federal consumer financial law.

Section 1070.2(i) defines ''confidential supervisory information'' to include various materials that the CFPB generates or receives that relate to the examination of financial institutions. These materials include, first, examination, inspection, visitation, operating, condition, and compliance reports, and any information contained in, relating to, or derived from such reports. Second, the term includes documentary materials, including reports of examination, that the CFPB prepares or that are prepared by others for use by the CFPB in exercising its supervisory authority over financial institutions, as well as information derived from such documentary materials. Third, the term includes the CFPB's communications with financial institutions and agencies to the extent that such communications relate to the exercise of the CFPB's supervisory authority over financial institutions. Fourth, confidential supervisory information includes information that financial institutions provide to the CFPB to help it to evaluate the risks associated with consumer financial products and services and whether institutions should be deemed ''covered persons,'' as that term is defined by 12 U.S.C. 5481. Finally, the term includes other supervision-related information that is exempt from public disclosure under the FOIA pursuant to 5 U.S.C. 552(b)(8).

B. Summary of Subpart B: Rules Implementing the Freedom of Information Act

Subpart B contains the CFPB's rules that implement the Freedom of Information Act, 5 U.S.C. 552. The FOIA grants the public an enforceable right to obtain access to or copies of federal agency records unless disclosure of those records, or information contained within them, is exempt from disclosure pursuant to one or more statutory exemptions and exclusions. The FOIA also requires federal agencies to routinely publish in the **Federal Register,** or make available to the public, certain information concerning their organizational structures, policies and procedures, final opinions and orders, and records that have or are likely to become the objects of frequent FOIA requests. The regulations in this subpart implement the FOIA as required or authorized by various provisions of the statute. *See* 5 U.S.C. 552(a)(4)(A)(i); *id.* at 552(a)(6)(B)(iv); *id.* at 552(a)(6)(D)(1); *id.* at 552(a)(6)(E).

The CFPB modeled its FOIA regulations upon regulations promulgated by the other federal agencies, including the Treasury Department. The CFPB sought the input of the Department of Justice and the National Archives and Records Administration's Office of Government Information Services, which is responsible for promoting best practices among federal agencies as to their FOIA regulations and practices.

Because most of the CFPB's FOIA regulations track the statute itself and set forth requirements and procedures that are typical of most federal agencies, we do not deem it necessary to provide a detailed analysis of these regulations.

C. Summary of Subpart C: Disclosure of CFPB Information in Connection With Legal Proceedings

Subpart C of the rules sets forth procedures for serving the CFPB and its employees with copies of documents in connection with legal proceedings, such as summonses, complaints, subpoenas, and other litigation-related requests or demands for the CFPB's records or official information. Subpart C also describes the CFPB's procedures for considering such requests or demands for official information. These regulations (which are sometimes referred to as *Touhy* regulations) are modeled after similar regulations of other federal agencies. Below is a brief summary of these regulations.

Sections 1070.31–1070.33 of these regulations provide that, except as otherwise required by law, the CFPB's General Counsel is authorized to receive and accept service of process of, and the General Counsel is authorized to respond to, summonses and complaints in which the CFPB or its employees (in their official capacities) are sued, as well as subpoenas, court orders, and litigation demands and requests for the production of the CFPB's records and official information that are directed to the CFPB or its employees.

Section 1070.34 requires parties demanding the production of the CFPB's documents or testimony, in legal proceedings in which the United States or the CFPB are not parties, to provide the CFPB with certain information about the demand or request, including the name and forum of the proceeding, a detailed description of the nature of the information or testimony sought and its intended uses and relevance, a showing that the evidence sought through the production of the CFPB's records or testimony is not available from other sources, and, as the General Counsel deems appropriate, a statement of the party's plans to demand additional testimony or documents in the future. Unless and until a party provides this required information, the CFPB will not respond to a demand it receives.

Section 1070.37 sets forth various factors that the General Counsel shall consider in deciding whether to comply with a demand or request for the production of the CFPB's records or testimony. This section also lists factors that will normally cause the CFPB to refuse compliance with such a demand or request. These factors pertain to prudential considerations and discovery privileges established by federal statutes, rules, and case law.

Finally, section 1070.38 prohibits CFPB employees or former employees from providing opinion or expert testimony based upon information (other than general expertise) which they acquired in the scope and performance of their official CFPB duties, except to the extent that they provide such testimony on behalf of the United States or a party represented by the CFPB or the Department of Justice. The General Counsel has discretion to waive this prohibition if the requestor demonstrates an exceptional need or unique circumstances and that the anticipated testimony will neither be adverse to the United States nor require the United States to pay the employee's or former employee's travel or other expenses associated with providing the requested testimony.

D. Summary of Subpart D: Confidential Information

Subpart D of the rules pertains to the protection and disclosure of confidential information that the CFPB generates and receives during the course of its work. Various provisions of the Act require the CFPB to promulgate regulations providing for the confidentiality of certain types of information and to protect such information from public disclosure. Other provisions of the Act, however, require or authorize the CFPB to share information, under certain circumstances, with other federal and state agencies to the extent that they share jurisdiction with the CFPB as to the supervision of financial institutions, the enforcement of consumer financial protection laws, or the investigation and resolution of consumer complaints

regarding financial institutions or consumer financial products and services. In implementing these provisions, the CFPB has sought to provide the maximum protection for confidential information, while ensuring its ability to share or disclose information to the extent necessary to achieve its mission.

The CFPB recognizes that much of the information that it will generate and obtain during the course of its activities will be commercially, competitively, and personally sensitive in nature, and generally warrants heightened protection. The need for greater protection for these categories of information is reflected in the substantive law of privilege and in various statutes, including the FOIA and the Privacy Act, that provide for the protection of such information from disclosure.

Notwithstanding these concerns, there are instances in which the disclosure of confidential information will be necessary or appropriate for the CFPB to accomplish its statutory mission, such as the investigation and resolution of consumer complaints or the enforcement of federal consumer financial law. Disclosures may also serve the public interest where federal and state agencies share elements of the CFPB's mission and where, by sharing information, they can do their jobs more effectively.

The regulations in this subpart balance these competing concerns by generally prohibiting the CFPB and its employees from disclosing confidential information to non-employees, and even in certain cases to its employees, except in limited circumstances. Even where the CFPB permits disclosures of confidential information, the CFPB imposes strict limits upon the further use and dissemination of disclosed information.

Where appropriate, the CFPB has based the regulations in this subpart upon regulations of the other federal financial regulatory agencies that provide for the confidentiality and disclosure of certain information generated or received in the course of supervising, investigating, or pursuing enforcement actions against financial institutions. A summary of this subpart follows below.

As a preliminary matter, section 1070.2 of the rules, which we discuss above, defines the term ''confidential information'' as well as the three categories of confidential information to which this subpart refers: Confidential consumer complaint information, confidential investigatory information, and confidential supervisory information. In certain circumstances, the statute requires disparate treatment of these three categories of confidential information.

Section 1070.41(a) generally prohibits the disclosure of confidential information by the CFPB's employees, former employees, or other persons who possess the CFPB's confidential information, to non-employees of the CFPB or to CFPB employees for whom such information is not relevant to the performance of their assigned duties. This prohibition includes disclosures made by any means (including written or oral communications) or in any format (including paper and electronic formats).

Excluded from this general prohibition are disclosures of confidential information to consultants and contractors of the CFPB who agree, in writing, to protect the confidentiality of the information in accordance with federal law as well as any additional conditions or limitations that the CFPB may impose upon them.

Section 1070.41(c) states that the CFPB is not precluded from disclosing materials that it derives from or creates using confidential information, provided that such materials do not identify, either directly or indirectly, any particular persons to whom the confidential information pertains. This paragraph clarifies that the CFPB may create and publish reports, analyses, and other materials derived from confidential information so long as the reports, analyses, or other materials do not identify the subject of such information or discuss the information in such a way that one could infer the identity of the person it concerns. For example, the CFPB is not precluded from publishing reports that contain aggregate data derived from confidential information, provided the report cannot be used in conjunction with other publicly available information to re-identify the source of the information.

Section 1070.41(d) clarifies that nothing in subpart D requires or authorizes the CFPB to disclose confidential information that another agency has provided to the CFPB to the extent that such disclosure contravenes applicable law or the terms of any agreement that exists between the CFPB and the agency to govern the CFPB's treatment of information that the agency provides to the CFPB.

Section 1070.42(a) provides that the CFPB may, in its discretion, disclose confidential supervisory information, such as reports of examination, to supervised financial institutions to which the reports pertain. To the extent that the CFPB chooses to do so, section 1070.42(b) prohibits institutions from further disseminating the confidential information it receives except in limited circumstances. Supervised financial institutions may share confidential supervisory information with their directors, officers, and employees, and with those of their parent companies, to the extent that the disclosure of such confidential supervisory information is relevant to the performance of such individuals' assigned duties. Supervised financial institutions may also share confidential supervisory information with their (or their parent companies') outside legal counsel, certified public accountants, and consultants, provided that the supervised financial institutions take reasonable steps to ensure that such legal counsel, accountants, or consultants do not utilize, make or retain copies of, or further disclose confidential information except as is necessary to provide advice to the supervised financial institutions, their parent companies, or to their respective directors, officers, or employees. Furthermore, the institutions must keep written records of their disclosures of confidential information to their legal counsel, accountants, and consultants, along with the steps they have taken to ensure that these accountants, legal counsel, and consultants do not improperly utilize, make or retain copies of, or disclose such information. Supervised financial institutions shall provide these written records to the CFPB, upon request or demand.

Section 1070.43 sets forth circumstances under which the CFPB shall or may disclose various categories of confidential information to law enforcement agencies and to other government agencies.

Section 1070.43(a)(1) implements sections 1022(c)(6)(C)(i) and 1025(e)(1)(C) of the Act, which require the CFPB to share with federal and state agencies having jurisdiction over supervised financial institutions, the CFPB's reports of examination of those supervised financial institutions, including drafts thereof, final reports, and revisions to final reports, provided that the CFPB receives from the agency reasonable assurances as to the confidentiality of the information provided.

Section 1070.43(a)(2) implements section 1013(b)(3)(D) of the Act, which requires the CFPB to share confidential consumer complaint information with federal and state agencies, provided that the agency first gives written assurance to the CFPB that it will maintain such information in a manner that conforms to the standards that apply to federal agencies for the protection of the

confidentiality of personally identifiable information and for data security and integrity.

Section 1070.43(b)(1), meanwhile, authorizes the CFPB to make discretionary disclosures of confidential information to federal and state agencies under certain circumstances. For example, this provision implements section 1022(c)(6)(C)(ii) of the Act, which authorizes the CFPB, upon request, to share confidential supervisory information about supervised financial institutions (other than reports of examination) with federal and state agencies having jurisdiction over those institutions. Section 1070.43(b)(1) also authorizes the CFPB, upon request, to share confidential investigatory information about supervised financial institutions with federal and state agencies having jurisdiction over those institutions.

Section 1070.43(b)(2) sets forth procedures for federal and state agencies to follow when requesting access to the CFPB's confidential information as set forth in section 1070.43(b)(1). Requests must be submitted in writing by authorized officers or employees of the agencies to the CFPB's General Counsel, who will act upon it in consultation with the CFPB's Associate Director for Supervision and Enforcement or with other appropriate CFPB personnel. Requests should describe the nature of the confidential information and documents sought and the purposes for which it will be used. Requests should also identify the agency's legal authority for requesting the documents and any provisions that restrict CFPB's disclosure. Finally, the requests should state that the requesting agency will maintain the requested confidential information in accordance with these rules and in a manner that conforms to the standards that apply to federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity. Moreover, the requests should commit the agencies to adhere to any additional conditions or limitations that the CFPB, in its discretion, decides to impose.

Section 1070.43(c) clarifies that requests by state agencies for information or records of the CFPB that do not constitute confidential information must be made in accordance with the CFPB's FOIA regulations set forth in subpart B.

Sections 1070.43(d) permit certain federal and state agencies to negotiate agreements that provide for standing requests for the exchange of confidential information.

Section 1070.44 states that nothing in this part limits the CFPB's discretion to disclose confidential consumer complaint information, to the extent permitted by law, to the extent that such disclosure is necessary to investigate, resolve, or otherwise respond to consumer complaints or inquires regarding financial institutions or consumer financial products and services.

Section 1070.45(a) permits the CFPB to affirmatively disclose confidential investigative information, such as civil investigative demand material and other confidential information that becomes part of the CFPB's investigative files, during the course of the CFPB's investigations and enforcement proceedings. Thus, the CFPB may disclose confidential information to its enforcement personnel and in investigational hearings and witness interviews, as is reasonably necessary, and to Congress upon request. The CFPB may also disclose confidential information in administrative or court proceedings to which the CFPB is a party. In the case of confidential investigatory material that contains any trade secret or privileged or confidential commercial or financial information, as claimed by designation by the submitter of such material, or confidential supervisory information, the submitter may seek an appropriate protective or *in camera* order prior to disclosure of such material in a proceeding. Furthermore, the CFPB may disclose confidential information to law enforcement and other government agencies in accordance with this subpart and as required under any other applicable law.

Section 1070.46 provides that notwithstanding the other rules in subpart D that restrict the circumstances under which the CFPB may disclose confidential information, the Director may authorize other disclosures of confidential information to the extent permitted by law. The CFPB does not intend for this provision to eviscerate the prohibition in section 1070.41 on the disclosure of confidential information. The CFPB intends for this provision to account for circumstances in which there is an unforeseen and exigent need for the CFPB to disclose confidential information for purposes or in a manner not otherwise provided for in these regulations. To circumscribe the extent to which the CFPB utilizes this provision to disclose confidential information, this section provides that the disclosure of confidential information may occur only with the prior written authorization of the Director. The responsibility may not be delegated by the Director, except that a person authorized by law to perform the functions of the Director may also exercise this responsibility. For example, pursuant to section 1066 of the Act, the Treasury Secretary may perform this function in the absence of a Director.

Section 1070.46(b) requires the CFPB to provide prior written notice to the person to whom the confidential information pertains (to the extent that the CFPB deems such notice to be appropriate under the circumstances) that the CFPB intends to disclose its confidential information, in accordance with this section. We note that the other federal bank regulatory agencies retain similar discretion to disclose confidential information.

Section 1070.47(a) declares the CFPB's retained ownership of any confidential information it discloses to federal or state agencies, to supervised financial institutions, or to other persons as provided in subpart D. It prohibits further disclosures of such information without the CFPB's prior written authorization. It directs recipients of confidential information who receive requests or demands for its further disclosure to refer such requests or demands to the CFPB, afford the CFPB an opportunity to respond or intervene, and to assert legal exemptions or privileges on the CFPB's behalf if so requested. To the extent that requests for confidential information are made pursuant to the FOIA, the Privacy Act, or state law equivalents of those statutes, section 1070.47(a)(3) requires federal or state agency recipients to refer such requests to the CFPB for its response. As provided by section 1070.47(a)(4), nothing in this section precludes a recipient of confidential information under subpart D from disclosing such information pursuant to a valid federal court order or a request or demand from a duly authorized committee of the United States Congress. In such cases where disclosure is compulsory, the disclosing party shall use its best efforts to secure a protective order or agreement that maintains the confidentiality of the confidential information disclosed.

Section 1070.47(b) permits the CFPB to impose any additional conditions or limitations that it deems prudent upon its disclosures of confidential information to other agencies or persons.

Section 1070.47(c) clarifies that disclosures of confidential information pursuant to subpart D are not intended and should not be construed to constitute a waiver of any privileges that are otherwise available to the CFPB or

to any agency or person with respect to this confidential information.

E. Summary of Subpart E: The Privacy Act

Subpart E contains the CFPB's rules that implement the Privacy Act of 1974, 5 U.S.C. 552a. The Privacy Act serves to balance the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them.

The regulations in this subpart implement the Privacy Act, as required by 5 U.S.C. 552a(f), by establishing procedures by which the public may request access to information or records that the CFPB maintains about them, request amendment or correction of such information or records, and request an accounting of disclosures of their records by the CFPB.

As with its FOIA regulations, the CFPB modeled its Privacy Act regulations upon regulations promulgated by the other federal agencies, including the Treasury Department. Because most of the CFPB's Privacy Act regulations track the statute itself and set forth requirements and procedures that are typical of most federal agencies, we do not deem it necessary to provide a detailed analysis of these regulations.

Nevertheless, we briefly summarize and discuss section 1070.60(a) of subpart E, which identifies three systems of records (CFPB.002 Depository Institution Supervision Database, CFPB.003 Non-Depository Institution Supervision Database, and CFPB.004 Enforcement Database) that, pursuant to 5 U.S.C. 552a(k)(2), the CFPB has exempted from requirements of the Privacy Act that otherwise grant the public access to the CFPB's records contained within these systems of records, 5 U.S.C. 552a(d), require the CFPB to account for disclosures of records contained in the systems of records, *id.* at 552a(c)(3) require the CFPB to maintain in such systems only as much information about individuals as is relevant and necessary to accomplish the CFPB's statutory mission, *id.* at 552(e)(1), and require the CFPB to publish certain information about these systems and how to access them. *Id.* at 552a(e)(1), (e)(4)(G)–(I), (f).

The CFPB has exempted these three systems of records from the foregoing requirements of the Privacy Act because these systems of records will contain information relating to the CFPB's supervision of financial institutions and its investigations into violations of and its enforcement of the federal consumer financial laws. Because the CFPB's supervision and enforcement activities may examine or target the conduct of individuals, granting such individuals access to the CFPB's information about them and publishing accounts of the CFPB's disclosure of such information could interfere with or undermine these activities. For example, granting individuals access to the CFPB's examination and investigative records regarding them could reveal to the individuals that their conduct is of interest to the CFPB or is a target of its examinations or investigations, thereby leading such individuals to conceal, alter, destroy, or fabricate evidence.

The exemption is also needed in order to encourage persons having knowledge of violations of the federal consumer financial laws to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected.

III. Procedural Requirements

The CFPB has determined that good cause exists, pursuant to 5 U.S.C. 553(b), to publish these regulations as an interim final rule. When the CFPB is authorized on July 21, 2011 to begin exercising various regulatory authorities, it will be necessary to promptly establish procedures to facilitate the CFPB's interactions with the public. The CFPB's failure to promptly establish such procedures will impair the public's right to gain access to information about the CFPB and about themselves that the CFPB maintains. The absence of confidentiality regulations will also impair the confidentiality and privacy rights of those who submit sensitive information to the CFPB as well as the ability of the CFPB to use that information to carry out its statutory mission. Furthermore, the CFPB has consulted other federal financial regulatory agencies and the Office of Government Information Services about the interim final rule. Thus, the CFPB concludes that notice and public comment are unnecessary for these regulations and that delay will be contrary to the public interest. For the same reasons, the CFPB has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

The CFPB further concludes that subpart D of the interim final rule, which governs the disclosure of the CFPB's confidential information, constitutes an agency rule of organization, procedure, or practice that is exempt from notice and public comment pursuant to 5 U.S.C. 553(b).

Notwithstanding these conclusions, the CFPB invites public comment on this interim final rule.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply.

The regulations in this part do not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

The CFPB has conducted an analysis of benefits, costs, and impacts [2] and consulted with appropriate Federal agencies. In developing the interim final rule, the CFPB considered potential benefits and costs to consumers and covered persons, including the impact on access to consumer financial products and services. The CFPB concludes that the interim final rule will benefit consumers and covered persons by granting them access, as required by the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a, to certain records and information of the CFPB. It will also benefit consumers and covered persons by protecting the confidentiality of sensitive information that pertains to them and which the CFPB receives or generates during the course of its work. The interim final rule will not impose any obligations on consumers or covered persons and it does not have any direct relevance to consumers' access to consumer financial products and services. Although the interim final rule allows the CFPB to disclose confidential information outside of the CFPB in certain instances, such disclosures are largely required by the Act or are consistent with disclosure practices of the other federal financial regulatory agencies. Any costs that may ensue from such disclosures are likely to be minimal because the rule restricts the circumstances under which confidential information may be disclosed, the permissible recipients of such disclosed information, the further disclosure and dissemination of such information by its recipients, and in many instances, the rule requires prior

[2] Section 1022(b)(2)(A) addresses the consideration of the potential benefits and costs of regulation to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services; the impact of proposed rules on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

notice of disclosure to affected persons. Moreover, the sharing of confidential information that the interim final rule contemplates is necessary for the CFPB—along with other federal and state agencies that share the CFPB's responsibilities regarding the supervision of financial institutions and the enforcement of consumer financial laws—to fulfill these responsibilities effectively, efficiently, and to the overall benefit of consumers and covered persons alike.

The CFPB has consulted with the prudential regulators and the Department of Housing and Urban Development, including with regard to the consistency of such rules with the prudential, market, or systemic objectives administered by such agencies.

List of Subjects in 12 CFR Part 1070

Confidential business information, consumer protection, freedom of information, privacy.

For the reasons set forth above, the Bureau of Consumer Financial Protection amends Chapter X in Title 12 of the Code of Federal Regulations by adding a new part 1070 to read as follows:

TITLE 12—BANKS AND BANKING

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

PART 1070—DISCLOSURE OF RECORDS AND INFORMATION

Subpart A—General Provisions and Definitions

Sec.

Subpart B—Freedom of Information Act

Subpart C—Disclosure of CFPB Information in Connection With Legal Proceedings

Subpart D—Confidential Information

Subpart E—Privacy Act

Authority: 12 U.S.C. 3401; 12 U.S.C. 5481 et seq.; 5 U.S.C. 552; 5 U.S.C. 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 30; 5 U.S.C. 301.

Subpart A—General Provisions and Definitions

§ 1070.1 Authority, purpose, and scope.

(a) *Authority.* (1) This part is issued by the Bureau of Consumer Financial Protection, an independent Bureau within the Federal Reserve System, pursuant to the Consumer Financial Protection Act of 2010, 12 U.S.C. 5481 *et seq.;* the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; the Federal Records Act, 44 U.S.C. 3101; the Paperwork Reduction Act, 44 U.S.C. 3510; the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401; the Trade Secrets Act, 18 U.S.C. 1905; 18 U.S.C. 641; and any other applicable law that establishes a basis for the exercise of governmental authority by the CFPB.

(2) This part establishes mechanisms for carrying out the CFPB's statutory responsibilities under the statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the CFPB has determined that the CFPB, and its delegates, may disclose information of the CFPB, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the CFPB's authority. The CFPB has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

(b) *Purpose and scope.* This part contains the CFPB's rules relating to the disclosure of records and information generated by and obtained by the CFPB.

(1) Subpart A contains general provisions and definitions used in this part.

(2) Subpart B implements the Freedom of Information Act, 5 U.S.C. 552.

(3) Subpart C sets forth the procedures with respect to subpoenas, orders, or other requests for CFPB information in connection with legal proceedings.

(4) Subpart D provides for the protection of confidential information and procedures for sharing confidential information with supervised institutions, government agencies, and others in certain circumstances.

(5) Subpart E implements the Privacy Act of 1974, 5 U.S.C. 552a.

§ 1070.2 General definitions.

For purposes of this part:

(a) *Business day* means any day except Saturday, Sunday or a legal federal holiday.

(b) *CFPB* means the Bureau of Consumer Financial Protection.

(c) *Chief FOIA Officer* means the Chief Operating Officer of the CFPB, or any CFPB employee to whom the Chief Operating Officer has delegated authority to act under this part.

(d) *Chief Operating Officer* means the Chief Operating Officer of the CFPB, or any CFPB employee to whom the Chief Operating Officer has delegated authority to act under this part.

(e) *Civil investigative demand material* means any documentary material, written report, or answers to questions, tangible thing, or transcript of oral testimony received by the CFPB in any form or format pursuant to a civil investigative demand, as those terms are set forth in 12 U.S.C. 5562, or received by the CFPB voluntarily in lieu of a civil investigative demand.

(f) *Confidential information* means confidential consumer complaint information, confidential investigative information, and confidential supervisory information, as well as any other CFPB information that may be exempt from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. 552(b). Confidential information does not include information contained in records that have been made publicly available by the CFPB or information that has otherwise been publicly disclosed by an employee with the authority to do so.

(g) *Confidential consumer complaint information* means information received or generated by the CFPB, pursuant to 12 U.S.C. 5493 and 5534, that comprises or documents consumer complaints or inquiries concerning financial institutions or consumer financial products and services and responses thereto, to the extent that such information is exempt from disclosure pursuant to 5 U.S.C. 552(b).

(h) *Confidential investigative information* means:

(1) Civil investigative demand material; and

(2) Any documentary material prepared by, on behalf of, received by, or for the use by the CFPB or any other federal or state agency in the conduct of an investigation of or enforcement action against a person, and any information derived from such documents.

(i)(1) *Confidential supervisory information* means:

(i) Reports of examination, inspection and visitation, non-public operating, condition, and compliance reports, and any information contained in, derived from, or related to such reports;

(ii) Any documents, including reports of examination, prepared by, or on behalf of, or for the use of the CFPB or any other federal, state, or foreign government agency in the exercise of supervisory authority over a financial institution, and any information derived from such documents;

(iii) any communications between the CFPB and a supervised financial institution or a federal, state, or foreign government agency related to the CFPB's supervision of the institution;

(iv) Any information provided to the CFPB by a financial institution to enable the CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services, or to assess whether an institution should be considered a covered person, as that term is defined by 12 U.S.C. 5481; and/or

(v) Information that is exempt from disclosure pursuant to 5 U.S.C. 552(b)(8).

(2) Confidential supervisory information does not include documents prepared by a financial institution for its own business purposes and that the CFPB does not possess.

(j) *Director* means the Director of the CFPB or his or her designee, or a person authorized to perform the functions of the Director in accordance with law.

(k) *Employee* means all current employees or officials of the CFPB, including employees of contractors and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction, or control of the Director, as well as the Director. The procedures established within this part also apply to former employees where specifically noted.

(l) *Financial institution* means any person involved in the offering or provision of a ''financial product or service,'' including a ''covered person'' or ''service provider,'' as those terms are defined by 12 U.S.C. 5481.

(m) *General Counsel* means the General Counsel of the CFPB or any CFPB employee to whom the General Counsel has delegated authority to act under this part.

(n) *Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(o) *Report of examination* means the report prepared by the CFPB concerning the examination or inspection of a supervised financial institution.

(p) *Supervised financial institution* means a financial institution subject to the CFPB's supervisory authority.

§ 1070.3 Custodian of records; certification; alternative authority.

(a) *Custodian of records.* The Chief Operating Officer is the official custodian of all records of the CFPB, including records that are in the possession or control of the CFPB or any CFPB employee.

(b) *Certification of record.* The Chief Operating Officer may certify the authenticity of any CFPB record or any copy of such record, for any purpose, and for or before any duly constituted federal or state court, tribunal, or agency.

(c) *Alternative authority.* Any action or determination required or permitted to be done by the Chief Operating Officer may be done by any employee who has been duly designated for this purpose by the Chief Operating Officer.

§ 1070.4 Records of the CFPB not to be otherwise disclosed.

Except as provided by this part, employees or former employees of the CFPB, or others in possession of a record of the CFPB that the CFPB has not already made public, are prohibited from disclosing such records, without authorization, to any person who is not an employee of the CFPB.

Subpart B—Freedom of Information Act

§ 1070.10 General.

This subpart contains the regulations of the CFPB implementing the Freedom of Information Act (the ''FOIA''), 5 U.S.C. 552, as amended. These regulations set forth procedures for requesting access to records maintained by the CFPB. These regulations should be read together with the FOIA, the 1987 Office of Management and Budget Guidelines for FOIA Fees, the CFPB's Privacy Act regulations set forth in subpart E, and the FOIA webpage on the CFPB's Web site, *http://www.consumerfinance.gov,* which provide additional information about this topic.

§ 1070.11 Information made available; discretionary disclosures.

(a) *In general.* The FOIA provides for public access to information and records developed or maintained by federal agencies. Generally, the FOIA divides agency information into three major categories and provides methods by which each category of information is to be made available to the public. The three major categories of information are as follows:

(1) Information required to be published in the **Federal Register** (see section 1070.12 of this subpart);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see section 1070.13 of this subpart); and

(3) Information required to be made available to any member of the public upon specific request (see sections 1070.14 through 1070.22 of this subpart).

(b) *Discretionary disclosures.* Even though a FOIA exemption may apply to the information or records requested, the CFPB may, if not precluded by law, elect under the circumstances not to apply the exemption. The fact that the exemption is not applied by the CFPB in response to a particular request shall have no precedential significance in processing other requests, but is merely an indication that, in the processing of the particular request, the CFPB finds no necessity for applying the exemption.

(c) *Disclosures of records frequently requested.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall make publicly available, as provided by section 1070.13 of this subpart, all records regardless of form or format, which have been released previously to any person under 5 U.S.C. 552(a)(3) and sections 1070.14 through 1070.22 of this subpart, and which the CFPB determines have become or are likely to become the subject of subsequent requests for substantially the same records because they are clearly of interest to the public at large. When the CFPB receives three (3) or more requests for substantially the same records, then the CFPB shall also make the released records publicly available.

§ 1070.12 Publication in the Federal Register.

(a) *Requirement.* The CFPB shall separately state, publish and maintain current in the **Federal Register** for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established place at which, the persons from whom, and the methods whereby, the public may obtain information, make submissions or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the CFPB; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) *Exceptions.* Publication of the information under clause (a) of this subpart shall be subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)) and the limitations provided in 5 U.S.C. 552(a)(1).

§ 1070.13 Public inspection and copying.

(a) *In general.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection and copying, including by posting on the CFPB's Web site, *http://www.consumerfinance.gov,* or, in the alternative, promptly publish and offer for sale the following information:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the CFPB but are not published in the **Federal Register**;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records made publicly available pursuant to section 1070.11 of this subpart; and

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available online.* For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) (paragraphs (a)(1) through (4) of this section), as soon as practicable, the CFPB shall make such records available on its e-FOIA Library, located at *http://www.consumerfinance.gov.*

(c) *Record availability at the on-site e-FOIA Library.* Any member of the public may, upon request, access the CFPB's e-FOIA Library via a computer terminal at 1801 L Street, NW., Washington, DC 20036. Such a request may be made by electronic means as set forth on the CFPB's Web site, *http://www.consumerfinance.gov,* or in writing, to the Chief FOIA Officer, Bureau of Consumer Financial Protection, 1801 L Street, NW., Washington, DC 20036. The request must indicate a preferred date and time for the requested access. The CFPB reserves the right to arrange a different date and time with the requester, if necessary.

(d) *Redaction of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the CFPB may redact identifying details contained in any matter described in paragraphs (a)(1) through (4) of this section before making such matters available for inspection or publication. The justification for the redaction shall be explained fully in writing, and the extent of such redaction shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the redaction is made. If technically feasible, the extent of the redaction shall be indicated at the place in the record where the redaction is made.

§ 1070.14 Requests for CFPB records.

(a) *In general.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall promptly make its records available to any person pursuant to a request that conforms to the rules and procedures of this section.

(b) *Form of request.* A request for records of the CFPB shall be made in writing or by electronic means.

(1) If a request is made in writing, it shall be addressed to the Chief FOIA Officer, Bureau of Consumer Financial Protection, 1801 L Street, NW., Washington, DC 20036. The request shall be labeled ''Freedom of Information Act Request.''

(2) If a request is made by electronic means, it shall be submitted as set forth on the CFPB's Web site, *http://www.consumerfinance.gov.* The request shall be labeled ''Freedom of Information Act Request.''

(c) *Content of request.* (1) In order to ensure the CFPB's ability to respond in a timely manner, a FOIA request should describe the records that the requester seeks in sufficient detail to enable CFPB personnel to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, the requester should include any file designations or descriptions for the records requested. As a general rule, the more specific the requester is about the records or type of records requested, the more likely the CFPB will be able to locate those records in response to the request;

(2) In order to ensure the CFPB's ability to communicate effectively with

the requester, a request should include contact information for the requester, including, to the extent available, a mailing address, telephone number, and e-mail address at which the CFPB may contact the requester regarding the request;

(3) The request should state whether the requester wishes to inspect the records or desires to receive an electronic copy or have a copy made and furnished without first inspecting the records;

(4) For the purpose of determining any fees that may apply to processing a request, a requester should indicate in the request whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, governmental entity, or ''other'' requester, as those terms are defined in section 1070.22(b) of this subpart, and the basis for claiming that fee category. Requesters may seek assistance in determining the appropriate fee category by contacting the CFPB's FOIA Public Liaison at the telephone number listed on the CFPB's Web site, *http://www.consumerfinance.gov.* The CFPB will use any information provided to the FOIA Public Liaison solely for the purpose of determining the appropriate fee category that applies to the requester;

(5) If a requester seeks a waiver or reduction of fees associated with processing a request, then the request shall include a statement to that effect as is required by section 1070.22(e) of this subpart. Any request that does not seek a waiver or reduction of fees constitutes an agreement of the requester to pay any and all fees (of up to $25) that may apply to the request, as otherwise set forth in section 1070.22 of this subpart, except that the requester may specify in the request an upper limit (of not less than $25) that the requester is willing to pay to process the request; and

(6) If a requester seeks expedited processing of a request, then the request must include a statement to that effect as is required by section 1070.17 of this subpart.

(d) *Perfected requests; effect of request deficiencies.* For purposes of computing its deadline to respond to a request, the CFPB will deem itself to have received a request only if, and on the date that, it receives a request that contains all of the information required by and that otherwise conforms with paragraphs (b) and (c) of this section. A request that another agency refers to the CFPB will be deemed to have been received by the CFPB on the date the request was received from the referring agency. The CFPB need not accept a request, process a request, or be bound by any deadlines in this subpart for processing a request that fails to conform to the requirements of paragraphs (b) and (c) of this section. If a request is deficient in any material respect, then the CFPB may return it to the requester and advise the requester in what respect the request is deficient, and what additional information is needed to respond to the request. The requester may then amend or resubmit the request. A determination by the CFPB that a request is deficient in any respect is not a denial of a request for records and such determinations are not subject to appeal. If a requester fails to respond to a CFPB notification that a request is deficient within thirty (30) days of the CFPB's notification, the CFPB will deem the request withdrawn.

(e) *Requests by an individual for CFPB records pertaining to that individual.* An individual who wishes to inspect or obtain copies of records of the Bureau that pertain to that individual shall file a request in accordance with subpart E of these rules.

(f) *Requests for CFPB records pertaining to another individual.* Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746 authorizing disclosure of the records to the requester, or submits proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). The CFPB may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

§ 1070.15 Responsibility for responding to requests for CFPB records.

(a) *In general.* In determining which records are responsive to a request, the CFPB ordinarily will include only records in its possession as of the date the CFPB begins its search for them. If any other date is used, the CFPB shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The Chief FOIA Officer shall be authorized to grant or deny any request for a record of the CFPB.

(c) *Consultations and referrals.* (1) When a requested record has been created by an agency other than the CFPB, the CFPB shall refer the record to the originating agency for a direct response to the requester.

(2) When a FOIA request is received for a record created by the CFPB that includes information originated by another agency, the CFPB shall consult the originating agency for review and recommendation on disclosure. The CFPB shall not release any such records without prior consultation with the originating agency.

(d) *Notice of referral.* Whenever the CFPB refers all or any part of the responsibility for responding to a request to another agency, it will notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred, in whole or in part.

§ 1070.16 Timing of responses to requests for CFPB records.

(a) *In general.* Except as set forth in paragraphs (b) through (d) of this section, and § 1070.17 of this subpart, the CFPB shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The CFPB may establish separate tracks to process simple and complex requests. The CFPB may assign a request to the simple or complex track(s) based on the amount of work and/or time needed to process the request. The CFPB shall process requests in each track based on the date the request was perfected in accordance with section 1070.14(d).

(2) The CFPB may provide a requester in its complex track with an opportunity to limit the scope of the request to qualify for faster processing within the specified limits of the simple track(s).

(c) *Time period for responding to requests for records.* Ordinarily, the CFPB shall have twenty (20) business days from when a request is received by the CFPB to determine whether to grant or deny a request for records. The twenty (20) business day time period set forth in this paragraph shall not be tolled by the CFPB except that the CFPB may:

(1) Make one reasonable demand to the requester for clarifying information about the request and toll the twenty (20) business day time period while it awaits the clarifying information; or

(2) Toll the twenty (20) business day time period while it awaits clarification from or addresses any dispute with the requester regarding the assessment of fees.

(d) *Unusual circumstances.* (1) Where the CFPB determines that due to unusual circumstances it cannot respond either to a request within the time period set forth in paragraph (c) of this section or to an appeal within the time period set forth in § 1070.21 of this subpart, the CFPB may extend the applicable time periods by informing the requester in writing of the unusual circumstances and of the date by which

the CFPB expects to complete its processing of the request or appeal. Any extension or extensions of time with respect to a request or an appeal shall not cumulatively total more than ten (10) business days. However, if the CFPB determines that it needs additional time beyond a ten (10) business day extension to process the request or appeal, then the CFPB shall notify the requester and provide the requester with an opportunity to limit the scope of the request or appeal or to arrange for an alternative time frame for processing the request or appeal or a modified request or appeal. The requester shall retain the right to define the desired scope of the request or appeal, as long as it meets the requirements contained in this subpart.

(2) As used in this paragraph, *unusual circumstances* means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more CFPB offices having substantial subject matter interest therein.

§ 1070.17 Requests for expedited processing.

(a) *In general.* The CFPB shall process a request on an expedited basis whenever a requester demonstrates a compelling need for expedited processing in accordance with the requirements of this paragraph.

(b) *Form and content of a request for expedited processing.* A request for expedited processing shall be made as follows:

(1) A request for expedited processing shall be made in writing or by electronic means and submitted as part of a request for records in accordance with section 1070.14(b). When a request for records includes a request for expedited processing, the request shall be labeled ''Expedited Processing Requested.''

(2) A request for expedited processing shall contain a statement that demonstrates a compelling need for the requester to obtain expedited processing of the requested records.

A *compelling need* is defined as follows:

(i) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the CFPB may make a reasoned determination that a delay in obtaining the requested records could pose such a threat; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(3) The requester shall certify the written statement that purports to demonstrate a compelling need for expedited processing to be true and correct to the best of the requester's knowledge and belief. The certification must be in the form prescribed by 28 U.S.C. 1746: ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].'' The requester shall mail or submit electronically a copy of such written certification to the Chief FOIA Officer as set forth in Section 1070.14(b) of this subpart. The CFPB may waive this certification requirement in appropriate circumstances.

(c) *Determinations of requests for expedited processing.* Within ten (10) calendar days of its receipt of a request for expedited processing, the CFPB shall decide whether to grant it and shall notify the requester of the determination in writing.

(d) *Effect of granting requests for expedited processing.* If the CFPB grants a request for expedited processing, then the CFPB shall give the expedited request priority over non-expedited requests and shall process the expedited request as soon as practicable. The CFPB may assign expedited requests to their own simple and complex processing tracks based upon the amount of work and/or time needed to process them. Within each such track, an expedited request shall be processed in the order of its receipt.

(e) *Appeals of denials of requests for expedited processing.* If the CFPB denies a request for expedited processing, then the requester shall have the right to submit an appeal of the denial determination in accordance with section 1070.21 of this subpart. The CFPB shall communicate this appeal right as part of its written notification to the requester denying expedited processing. The requester shall label its appeal request ''Appeal for Expedited Processing.'' The CFPB shall act expeditiously upon an appeal of a denial of a request for expedited processing.

§ 1070.18 Responses to requests for CFPB records.

(a) *Acknowledgements of requests.* Upon receipt of a perfected request, the CFPB will assign to the request a unique tracking number. The CFPB will send an acknowledgement letter to the requester by mail or email within ten (10) calendar days of receipt of the request. The acknowledgment letter will contain the following information:

(1) The applicable request tracking number;

(2) The date of receipt of the request, as determined in accordance with section 1070.14(d) of this subpart, as well as the date when the requester may expect a response;

(3) A brief statement identifying the subject matter of the request; and

(4) A confirmation, with respect to any fees that may apply to the request pursuant to section 1070.22 of this subpart, that the requester has sought a waiver or reduction in such fees, has agreed to pay any and all applicable fees, or has specified an upper limit (of not less than $25) that the requester is willing to pay in fees to process the request.

(b) *Initial determination to grant or deny a request.* (1) The officer designated in section 1070.15(b) to this subpart, or his or her delegate, shall make initial determinations either to grant or to deny in whole or in part requests for records.

(2) If the request is granted in full or in part, and if the requester requests a copy of the records requested, then a copy of the records shall be mailed or emailed to the requester in the requested format, to the extent the records are readily produceable in the requested format. The CFPB shall also send the requester a statement of the applicable fees, either at the time of the determination or shortly thereafter.

(3) In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records

may be inspected, and of the fees incurred in complying with the request. The CFPB shall then promptly make the records available for inspection at the time and place stated, in a manner that will not interfere with CFPB's operations and will not exclude other persons from making inspections. The requester shall not be permitted to remove the records from the room where inspection is made. If, after making inspection, the requester desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by section 1070.22 of this subpart. Fees may be charged for search and review time as stated in section 1070.22 of this subpart.

(4) If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail or by email. The letter of notification shall:

(i) State the exemptions relied upon in denying the request;

(ii) If technically feasible, indicate the amount of information deleted and the exemptions under which the deletion is made at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with § 1070.21 of this subpart; and

(v) Specify the official or office to which such appeal shall be submitted.

(5) If it is determined, after a reasonable search for records, that no responsive records have been found to exist, the requester shall be notified in writing or by email. The notification shall also advise the requester of the right to administratively appeal the CFPB's determination that no responsive records exist (i.e., to challenge the adequacy of the CFPB's search for responsive records) in accordance with section 1070.21 of this subpart. The response shall specify the official or office to which the appeal shall be submitted for review.

§ 1070.19 Classified information.

Whenever a request is made for a record containing information that another agency has classified, or which may be appropriate for classification by another agency under Executive Order 13526 or any other executive order concerning the classification of information, the CFPB shall refer the responsibility for responding to the request to the classifying or originating agency, as appropriate.

§ 1070.20 Requests for business information provided to the CFPB.

(a) *In general.* Business information provided to the CFPB by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information.* means commercial or financial information obtained by the CFPB from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter.* means any person from whom the CFPB obtains business information, directly or indirectly. The term includes, without limitation, corporations, state, local, and tribal governments, and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4 of the FOIA. These designations will expire ten (10) years after the date of the submission unless the submitter requests otherwise and provides justification for, a longer designation period.

(d) *Notice to submitters.* The CFPB shall provide a submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (e) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *When notice is required.* (1) The CFPB shall provide a submitter with notice of receipt of a request or appeal whenever:

(i) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The CFPB has reason to believe that the information may be protected from disclosure under Exemption 4.

(2) The notice requirements of this subsection shall not apply if:

(i) The CFPB determines that the information is exempt under the FOIA;

(ii) The information lawfully has been published or otherwise made available to the public;

(iii) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(iv) The designation made by the submitter under paragraph (1)(i) appears obviously frivolous, except that, in such a case, the CFPB shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(f) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, the CFPB shall afford a submitter ten (10) business days from the date of the notice to provide the CFPB with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter shall be considered to have no objection to disclosure of the information. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the CFPB may review the submitter's objection to disclose, if any.

(g) *Notice of intent to disclose.* The CFPB shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the CFPB decides to disclose business information over the objection of a submitter, the CFPB shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten (10) business days after the notice of the final decision to release the requested information has been mailed to the submitter. Except as otherwise prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(h) *Notice to submitter of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the CFPB shall promptly notify the submitter of that business information of the existence of the suit.

(i) *Notice to requester of business information.* The CFPB shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1070.21 Administrative appeals.

(a) *Grounds for administrative appeals.* A requester may appeal an initial determination of the CFPB, including for the following reasons:

(1) To deny access to records in whole or in part (as provided in section 1070.18(b) of this subpart);

(2) To assign a particular fee category to the requestor (as provided in section 1070.22(b) of this subpart);

(3) To deny a request for a reduction or waiver of fees (as provided in section 1070.22(e) of this subpart);

(4) That no records exist that are responsive to the request (as provided in section 1070.18(b) of this subpart); or

(5) To deny a request for expedited processing (as provided in section 1070.17(e) of this subpart).

(b) *Time limits for filing administrative appeals.* An appeal, other than an appeal of a denial of expedited processing, must be postmarked or submitted electronically on a date that is within forty-five (45) calendar days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later. An appeal of a denial of expedited processing must be made within ten (10) days of the date of the initial determination letter to deny expedited processing (see section 1070.17 of this subpart).

(c) *Form and content of administrative appeals.* In order to ensure a timely response to an appeal, the appeal shall be made in writing or by electronic means as follows:

(1) If appeal is made in writing, it shall be addressed to and submitted to the officer specified in paragraph (e) of this section at the address set forth in § 1070.14(b) of this subpart. The appeal shall be labeled ''Freedom of Information Act Appeal.''

(2) If an appeal is made by electronic means, it shall be addressed to the officer specified in paragraph (e) of this section and submitted as set forth on the CFPB's Web site, *http://www.consumerfinance.gov.* The appeal shall be labeled ''Freedom of Information Act Appeal.''

(3) The appeal shall set forth contact information for the requester, including, to the extent available, a mailing address, telephone number, or email address at which the CFPB may contact the requester regarding the appeal; and

(4) The appeal shall specify the applicable request tracking number, the date of the initial request, and the date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(d) *Processing of administrative appeals.* Appeals will be stamped with the date of their receipt by the FOIA response office, and will be processed in the order of their receipt. The receipt of the appeal will be acknowledged by the CFPB and the requester will be advised of the date the appeal was received, the appeal tracking number, and the expected date of response.

(e) *Determinations to grant or deny administrative appeals.* The General Counsel is authorized to and shall decide whether to affirm the initial determination (in whole or in part) or to reverse the initial determination (in whole or in part) and shall notify the requester of this decision in writing within twenty (20) business days after the date of receipt of the appeal, unless extended pursuant to section 1070.16(d) of this subpart.

(1) If it is decided that the appeal is to be denied (in whole or in part) the requester shall be:

(i) Notified in writing of the denial;

(ii) Notified of the reasons for the denial, including which of the FOIA exemptions were relied upon;

(iii) Notified of the name and title or position of the official responsible for the determination on appeal;

(iv) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B); and

(v) Provided with notification that mediation services are available to the requester as a non-exclusive alternative to litigation through the Office of Government Information Services in accordance with 5 U.S.C. 552(h)(3).

(2) If the initial determination is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(f) *Adjudication of administrative appeals of requests in litigation.* An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

§ 1070.22 Fees for processing requests for CFPB records.

(a) *In general.* The CFPB shall determine whether and to what extent to charge a requester fees for processing a FOIA request, for the services and in the amounts set forth in this paragraph, by determining an appropriate fee category for the requester (as set forth in paragraph (b) of this section) and then by charging the requester those fees applicable to the assigned category (as set forth in paragraph (c) of this section), unless circumstances exist (as described in paragraph (d) of this section) that render fees inapplicable or inadvisable or unless the requester has requested and the CFPB has granted a reduction in or waiver of fees (as set forth in paragraph (e) of this section).

(1) The CFPB shall charge a requester fees for the cost of copying records at rates set forth on the CFPB's Web site, *http://www.consumerfinance.gov.*

(2) The CFPB shall charge a requester for all time spent by its employees searching for records that are responsive to a request. The CFPB shall charge the requester fees for search time as follows:

(i) The CFPB shall charge for search time at the salary rate(s) (basic pay plus sixteen (16) percent) of the employee(s) who conduct the search. However, where a single class of employee is used exclusively (*e.g.,* all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. This charge shall include transportation of employees and records necessary to the search at actual cost. Fees may be charged for search time even if the search does not yield any responsive records, or if records are exempt from disclosure.

(ii) The CFPB shall charge the requester for the actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output will be the actual

direct cost. For a requester in the ''all other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (*i.e.,* the operator), the charge for the computer search will begin.

(3) The CFPB shall charge a requester for time spent by its employees examining responsive records to determine whether any portions of such record are exempt from disclosure, pursuant to the FOIA exemptions of 5 U.S.C. 552(b). The CFPB shall also charge a requester for time spent by its employees redacting any such exempt information from a record and preparing a record for release to the requester. The CFPB shall charge a requester for time spent reviewing records at the salary rate(s) (*i.e.,* basic pay plus sixteen (16) percent) of the employees who conduct the review. However, when a single class of employee is used exclusively (*e.g.,* all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. Fees shall be charged for review time even if records ultimately are not disclosed.

(4) Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection. However, no fee shall be charged for monitoring a requester's inspection of records.

(5) Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the CFPB. This includes, but is not limited to:

(i) Certifying that records are true copies; or

(ii) Sending records by special methods such as express mail, etc.

(b) *Categories of requesters.* (1) For purposes of assessing fees as set forth in this section, each requester shall be assigned to one of the following categories:

(i) *Commercial user* refers to one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The CFPB may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(iii) *Non-commercial scientific institution* refers to an institution that is not operated on a ''commercial user'' basis as that term is defined in paragraph (b)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this subparagraph, the term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase by or subscription by or free distribution to the general public. Other examples of news media entities include online publications and Web sites that regularly deliver news content to the public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the CFPB may also consider the past publication record of the requester in making such a determination.

(v) *Other requester* refers to a requester who does not fall within any of the previously described categories.

(2) Within twenty (20) calendar days of its receipt of a request, the CFPB shall make a determination as to the proper fee category to apply to a requester. The CFPB shall inform the requester of the determination in the request acknowledgment letter, or if no such letter is required, in writing. The CFPB shall base its determination upon a review of the requester's submission and the CFPB's own records. Where the CFPB has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the CFPB should seek additional clarification before assigning the request to a specific category.

(3) If the CFPB assigns to a requester a fee category, then the requester shall have the right to submit an appeal of the CFPB's determination in accordance with section 1070.21 of this subpart. The CFPB shall communicate this appeal right as part of its written notification to the requester of an adverse fee category determination. The requester shall label its appeal request ''Appeal of Fee Category Determination.''

(c) *Fees applicable to each category of requester.* The following fee schedule applies uniformly throughout the CFPB to requests processed under the FOIA. Specific levels of fees are prescribed for each category of requester defined in paragraph (b) of this section.

(1) Commercial users shall be charged the full direct costs of searching for, reviewing, and duplicating the records they request. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the CFPB is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The CFPB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records or no records are located.

(2) Educational and non-commercial scientific institution requesters shall be charged only for the cost of duplicating the records they request, except that the CFPB shall provide the first one hundred (100) pages of duplication free of charge. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) Representatives of the news media shall be charged only for the cost of duplicating the records they request, except that the CFPB shall provide them with the first one hundred (100) pages of duplication free of charge.

(4) Other requesters who do not fit any of the categories described above

shall be charged the full direct cost of searching for and duplicating records that are responsive to the request, except that the CFPB shall provide the first one hundred (100) pages of duplication and the first two hours of search time free of charge. The CFPB may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in the CFPB's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974, 5 U.S.C. 552a, which permit fees only for duplication, after the first one hundred (100) pages are furnished free of charge.

(d) *Other circumstances when fees are not charged.* Notwithstanding paragraphs (b) and (c) of this section, the CFPB may not charge a requester a fee for processing a FOIA request if any of the following applies:

(1) The cost of collecting a fee would be equal to or greater than the fee itself;

(2) The fees were waived or reduced in accordance with paragraph (e) of this section;

(3) If the CFPB fails to comply with any time limit under §§ 1070.16 or 1070.21 of this subpart, and no unusual circumstances (as that term is defined in § 1070.16(d)) or exceptional circumstances apply to the processing of the request, then the CFPB shall not assess search fees, or if the requester is an educational or noncommercial scientific institution, then the CFPB shall not assess duplication fees. The term exceptional circumstances does not include a delay that results from a predictable CFPB workload of requests, unless the CFPB demonstrates reasonable progress in reducing its backlog of pending requests; or

(4) If the CFPB determines, as a matter of administrative discretion, that waiving or reducing the fees would serve the interest of the United States Government.

(e) *Waiver or reduction of fees.* (1) A requester shall be entitled to receive from the CFPB a waiver or reduction in the fees otherwise applicable to a FOIA request whenever the requester:

(i) Requests such waiver or reduction of fees in writing or by electronic means as part of the FOIA request;

(ii) Labels the request for waiver or reduction of fees ''Fee Waiver or Reduction Requested'' on the FOIA request; and

(iii) Demonstrates that the fee reduction or waiver request that a waiver or reduction of the fees is in the public interest because:

(A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Furnishing the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requester has satisfied the requirements of paragraph (e)(1)(ii)(A), the CFPB shall consider the following factors:

(i) The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, and not remote or attenuated.

(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially similar form, is not as likely to contribute to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requester has satisfied the requirements of paragraph (e)(1)(ii)(B), the CFPB shall consider the following factors:

(i) The CFPB shall consider any commercial interest of the requester (with reference to the definition of *commercial user* in (b)(1)(i) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The CFPB ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) The CFPB shall decide whether to grant or deny a request to reduce or waive fees prior to processing a request. The CFPB shall notify the requester of the determination in writing.

(6) If the CFPB denies a request to reduce or waive fees, then the CFPB shall advise the requester, in the denial notification letter, that the requester may incur fees if the CFPB proceeds to process the request. The notification letter shall also advise the requester that the CFPB will not proceed to process the request further unless the requester, in writing, directs the CFPB to do so and either agrees to pay any fees that may apply to processing the request or specifies an upper limit (of not less than $25) that the requester is willing to pay to process the request. If the CFPB does not receive this written direction and agreement/specification within thirty (30) calendar days of the date of the denial notification letter, then the CFPB shall deem the request to be withdrawn.

(7) If the CFPB denies a request to reduce or waive fees, then the requester shall have the right to submit an appeal of the denial determination in accordance with section 1070.21 of this subpart. The CFPB shall communicate this appeal right as part of its written notification to the requester denying the fee reduction or waiver request. The requester should label its appeal request ''Appeal for Fee Reduction/Waiver.''

(f) *Advance notice and prepayment of fees.* (1) When the CFPB estimates the fees for processing a request to exceed the limit set by the requester, and that amount is less than $250, or the requester did not specify a limit and the amount is less than $250, the requester shall be notified of the estimated fees, and provided a breakdown of the fees attributable to search, review, and duplication, respectively. The requester must provide an agreement to pay the estimated fees; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the fees are estimated to exceed $250, the requester shall be notified of the estimated fees and provided a breakdown of the fees attributable to search, review, and

duplication, respectively. The requester must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester shall also be given an opportunity to reformulate the request in such a way as to lower the applicable fees.

(3) The CFPB reserves the right to request prepayment after a request is processed and before documents are released.

(4) If a requester has previously failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the CFPB begins to process a new request or the pending request.

(5) When the CFPB acts under paragraphs (f)(1) through (4) of this section, the statutory time limits of twenty (20) days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

(g) *Form of payment.* Payment may be tendered as set forth on the CFPB's Web site, *http://www.consumerfinance.gov.*

(h) *Charging interest.* The CFPB may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the CFPB. The CFPB will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregating requests.* Where the CFPB reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the CFPB may aggregate those requests and charge accordingly. The CFPB may presume that multiple requests of this type made within a thirty (30) day period have been made in order to avoid fees. Where requests are separated by a longer period, the CFPB will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

§ 1070.23 Authority and responsibilities of the Chief FOIA Officer.

(a) *Chief FOIA Officer.* The Director authorizes the Chief FOIA Officer to act upon all requests for agency records, with the exception of determining appeals from the initial determinations of the Chief FOIA Officer, which will be decided by the General Counsel. The Chief FOIA officer shall, subject to the authority of the Director:

(1) Have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(2) Monitor implementation of the FOIA throughout the CFPB and keep the Director and the General Counsel, and the Attorney General appropriately informed of the CFPB's performance in implementing the FOIA;

(3) Recommend to the Director such adjustments to agency practices, policies, personnel and funding as may be necessary to improve the Chief FOIA Officer's implementation of the FOIA;

(4) Review and report to the Attorney General, through the Director, at such times and in such formats as the Attorney General may direct, on the CFPB's performance in implementing the FOIA;

(5) Facilitate public understanding of the purposes of the statutory exemptions of the FOIA by including concise descriptions of the exemptions in both the agency's handbook and the agency's annual report on the FOIA, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) Designate one or more FOIA Public Liaisons.

(b) *FOIA Public Liaisons.* FOIA Public Liaisons shall report to the Chief FOIA Officer and shall serve as supervisory officials to whom a requester can raise concerns about the service the requester has received from the CFPB's FOIA office, following an initial response from the FOIA office staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Subpart C—Disclosure of CFPB Information in Connection With Legal Proceedings

§ 1070.30 Purpose and scope; definitions.

(a) This subpart sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints directed to the CFPB, the Director, or to any CFPB employee in connection with federal or state litigation arising out of or involving the performance of official activities of the CFPB; and

(2) Subpoenas, court orders, or other requests or demands for any CFPB information, whether contained in the files of the CFPB or acquired by a CFPB employee as part of the performance of that employee's duties or by virtue of employee's official status.

(b) This subpart does not apply to requests for official information made pursuant to subparts B, D, and E of this part.

(c) This subpart does not apply to requests for information made in the course of adjudicating any claims against the CFPB by CFPB employees (present or former), or applicants for CFPB employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission, the U.S. Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, or their successor agencies, or a labor arbitrator operating under a collective bargaining agreement between the CFPB and a labor organization representing CFPB employees, or their successor agencies.

(d) This subpart is intended only to inform the public about CFPB procedures concerning the service of process and responses to subpoenas, summons, or other demands or requests for official information or action and is not intended to and does not create, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the CFPB or the United States.

(e) For purposes of this subpart, and except as the CFPB may otherwise determine in a particular case:

(1) *Demand* means a subpoena or order for official information, whether contained in CFPB records or through testimony, related to or for possible use in a legal proceeding.

(2) *Legal proceeding* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, grand juries, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature, and whether foreign or domestic. This phrase includes all stages of discovery as well as formal or informal requests by attorneys or others involved in legal proceedings.

(3) *Official Information* means all information of any kind, however stored, that is in the custody and control of the CFPB or was acquired by CFPB

employees, or former employees as part of their official duties or because of their official status while such individuals were employed by or served on behalf of the CFPB. Official information also includes any information acquired by CFPB employees or former employees while such individuals were engaged in matters related to consumer financial protection functions prior to the employees' transfer to the CFPB pursuant to Subtitle F of the Consumer Financial Protection Act of 2010.

(4) *Request* means any request for official information in the form of testimony, affidavits, declarations, admissions, responses to interrogatories, document production, inspections, or formal or informal interviews, during the course of a legal proceeding, including pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or other applicable rules of procedure.

(5) *Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videographed statements or any responses given during discovery or similar proceeding in the course of litigation.

§ 1070.31 Service of summonses and complaints.

(a) Only the General Counsel is authorized to receive and accept summonses or complaints sought to be served upon the CFPB or CFPB employees sued in their official capacity. Such documents should be delivered to the Office of the General Counsel, Bureau of Consumer Financial Protection, 1801 L Street, NW., Washington, DC 20036. This authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

(b) If, notwithstanding paragraph (a) of this section, any summons or complaint described in that paragraph is delivered to an employee of the CFPB, the employee shall decline to accept the proffered service and may notify the person attempting to make service of the regulations set forth herein. If, notwithstanding this instruction, an employee accepts service of a document described in paragraph (a), the employee shall immediately notify and deliver a copy of the summons and complaint to the General Counsel.

(c) When a CFPB employee is sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the CFPB (whether or not the officer or employee is also sued in an official capacity), the employee by law is to be served personally with process. *See* Fed. R. Civ. P. 4(i)(3). An employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the CFPB shall immediately notify, and deliver a copy of the summons and complaint to, the General Counsel.

(d) The CFPB will only accept service of process for an employee sued in his or her official capacity. Documents for which the General Counsel accepts service in official capacity shall be stamped ''Service Accepted in Official Capacity Only.'' Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under applicable laws or rules.

§ 1070.32 Service of subpoenas, court orders, and other demands for CFPB information or action.

(a) Except in cases in which the CFPB is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the General Counsel is authorized to receive and accept subpoenas or other demands or requests directed to the CFPB or its employees, whether civil or criminal in nature, for:

(1) Records of the CFPB;

(2) Official information including, but not limited to, testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the CFPB or which any CFPB employee acquired in the course and scope of the performance of his or her official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official CFPB duty.

(b) Documents described in paragraph (a) should be directed to the Office of the General Counsel, Bureau of Consumer Financial Protection, 1801 L Street, NW., Washington, DC 20036. This authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations. Acceptance of such documents by the General Counsel does not constitute a waiver of any defense that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable laws or regulations.

(c) In the event that any demand or request described in paragraph (a) is sought to be delivered to a CFPB employee other than in the manner prescribed in paragraph (b) of this section, such employee shall, after consultation with the General Counsel, decline service and direct the server of process to these regulations. If the demand or request is nonetheless delivered to the employee, the employee shall immediately notify, and deliver a copy of that document to, the General Counsel.

(d) Except as otherwise provided in this subpart, the CFPB is not an agent for service, or otherwise authorized to accept on behalf of its employees, any subpoenas, orders, or other demands of federal or state courts, or requests from individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual CFPB employee to whom such demand or request is directed.

(e) Copies of any subpoenas, show cause orders, or other demands of federal or state courts, or requests from private individuals or attorneys that are directed to former employees of the CFPB in connection with legal proceedings arising out of the performance of official duties shall also be served upon General Counsel. The CFPB shall not, however, serve as an agent for service for the former employee, nor is the CFPB otherwise authorized to accept service on behalf of its former employees. If the demand involves their official duties as CFPB employees, former employees who receive subpoenas, show cause orders, or similar compulsory process of federal or state courts should also notify, and deliver a copy of the document to, the General Counsel.

§ 1070.33 Testimony and production of documents prohibited unless approved by the General Counsel.

(a) Unless authorized by the General Counsel, no employee or former employee of the CFPB shall, in response to a demand or a request provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any official information.

(b) Unless authorized by the General Counsel, no employee or former employee shall, in response to a demand or request, produce any document or any material acquired as part of the performance of that employee's duties or by virtue of that employee's official status.

§ 1070.34 Procedure when testimony or production of documents is sought; general.

(a) If, as part of a proceeding in which the United States or the CFPB is not a party, official information is sought

through a demand for testimony, CFPB records, or other material, the party seeking such information must (except as otherwise required by federal law or authorized by the General Counsel) set forth in writing:

(1) The title and forum of the proceeding, if applicable;

(2) A detailed description of the nature and relevance of the official information sought;

(3) A showing that other evidence reasonably suited to the requester's needs is not available from any other source; and

(4) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony.

(b) To the extent he or she deems necessary or appropriate, the General Counsel may also require from the party seeking such information a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, identification of potentially relevant documents, or any other information deemed necessary to make a determination. The purpose of this requirement is to assist the General Counsel in making an informed decision regarding whether testimony or the production of documents or material should be authorized.

(c) The General Counsel may consult or negotiate with an attorney for a party, or the party if not represented by an attorney, to refine or limit a request or demand so that compliance is less burdensome.

(d) The General Counsel will notify the CFPB employee and such other persons as circumstances may warrant of his or her decision regarding compliance with the request or demand.

§ 1070.35 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand described in section 1070.34 of this subpart is required before the General Counsel renders a decision, the CFPB will request that the appropriate CFPB attorney or an attorney of the Department of Justice, as appropriate, take steps to stay, postpone, or obtain relief from the demand pending decision. If necessary, the attorney will:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this subpart;

(3) Inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate CFPB official; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of an attorney of the CFPB or the Department of Justice on the employee's behalf, the employee, if necessary, shall respectfully request from the demanding court or authority a reasonable stay of proceedings for the purpose of obtaining instructions from the General Counsel.

§ 1070.36 Procedure in the event of an adverse ruling.

If a stay or, or other relief from, the effect of a demand made pursuant to sections 1070.34 and 1070.35 of this subpart is declined or not obtained, or if the court or other judicial or quasi-judicial authority declines to stay the effect of the demand made pursuant to sections 1070.34 and 1070.35 of this subpart, or if the court or other authority rules that the demand must be complied with irrespective of the General Counsel's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand citing this subpart and *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 1070.37 Considerations in determining whether the CFPB will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, CFPB officials and attorneys shall consider, among other pertinent considerations:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether the number of similar requests would have a cumulative effect on the expenditure of CFPB resources;

(3) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(4) The public interest;

(5) The need to conserve the time of CFPB employees for the conduct of official business;

(6) The need to avoid spending time and money of the United States for private purposes;

(7) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(8) Whether compliance would have an adverse effect on performance by the CFPB of its mission and duties; and

(9) The need to avoid involving the CFPB in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors, inter alia, exist:

(1) Compliance would violate a statute or applicable rule of procedure;

(2) Compliance would violate a specific regulation or Executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential or privileged commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would compromise the integrity of the deliberative processes of the CFPB;

(6) Compliance would not be appropriate or necessary under the relevant substantive law governing privilege;

(7) Compliance would reveal confidential information; or

(8) Compliance would interfere with ongoing investigations or enforcement proceedings, compromise constitutional rights, or reveal the identity of a confidential informant.

(c) The CFPB may condition disclosure of official information pursuant to a request or demand on the entry of an appropriate protective order.

§ 1070.38 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, CFPB employees or former employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official CFPB duties, except on behalf of the CFPB or the United States or a party represented by the CFPB, or the Department of Justice, as appropriate.

(b) Any expert or opinion testimony by a former employee of the CFPB shall be excepted from paragraph (a) of this section where the testimony involves only general expertise gained while employed at the CFPB.

(c) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the

interests of the United States, the General Counsel may, consistent with 5 CFR 2635.805, exercise his or her discretion to grant special, written authorization for CFPB employees, or former employees, to appear and testify as expert witnesses at no expense to the United States.

(d) If, despite the final determination of the General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a current or former CFPB employee, that person shall immediately inform the General Counsel of such order. If the General Counsel determines that no further legal review of or challenge to the court's order will be made, the CFPB employee, or former employee, shall comply with the order. If so directed by the General Counsel, however, the employee, or former employee, shall respectfully decline to testify.

Subpart D—Confidential Information

§ 1070.40 Purpose and scope.

This subpart does not apply to requests for official information made pursuant to subparts B, C, or E of this part.

§ 1070.41 Non-disclosure of confidential information.

(a) *Non-disclosure.* Except as required by law or as provided in this part, no employee or former employee of the CFPB, or any other person in possession of confidential information, shall disclose such confidential information by any means (including written or oral communications) or in any format (including paper and electronic formats), to:

(1) Any person who is not an employee of the CFPB; or

(2) Any CFPB employee when the disclosure of such confidential information to that employee is not relevant to the performance of the employee's assigned duties.

(b) *Disclosures to contractors and consultants.* Nothing in this subpart shall limit the discretion of the CFPB to provide confidential information to consultants or contractors retained by the CFPB, provided that such consultants or contractors agree in writing to treat such confidential information in accordance with these rules, federal laws and regulations that apply to federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the CFPB may impose.

(c) *Disclosure of materials derived from confidential information.* Nothing in this subpart shall limit the discretion of the CFPB to disclose materials that it derives from or creates using confidential information to the extent that such materials do not identify, either directly or indirectly, any particular person to whom the confidential information pertains.

(d) *Disclosability of confidential information provided to the CFPB by other agencies.* Nothing in this subpart requires or authorizes the CFPB to disclose confidential information that another agency has provided to the CFPB to the extent that such disclosure contravenes applicable law or the terms of any agreement that exists between the CFPB and the agency to govern the CFPB's treatment of information that the agency provides to the CFPB.

§ 1070.42 Disclosure of confidential supervisory information to and by supervised financial institutions.

(a) *Discretionary disclosure of confidential supervisory information to supervised financial institutions.* The CFPB may in its discretion, and to the extent consistent with applicable law, disclose confidential supervisory information concerning a supervised financial institution to that institution.

(b) *Disclosure of confidential supervisory information by supervised financial institution.*

(1) Any supervised financial institution lawfully in possession of confidential supervisory information of the CFPB pursuant to this section may disclose such information, or portions thereof, to its directors, officers, and employees, and to its parent company, if any, and its parent company's directors, officers, and employees, to the extent that the disclosure of such confidential supervisory information is relevant to the performance of such individuals' assigned duties.

(2) Any supervised financial institution lawfully in possession of confidential supervisory information of the CFPB pursuant to this section may disclose such information, or portions thereof, to any certified public accountant, legal counsel, or consultant employed by the supervised financial institution or its parent company, if any, provided that the supervised financial institution shall:

(i) Take reasonable steps to ensure that such certified public accountant, legal counsel, or consultant does not utilize, make or retain copies of, or disclose confidential supervisory information for any purpose, without the prior written approval of the CFPB's General Counsel, except as is necessary to provide advice to the supervised financial institution, its parent company, or the officers, directors, and employees of such supervised financial institution and parent company; and

(ii) Maintain a written account of all disclosures of confidential supervisory information that the supervised financial institution makes to its certified public accountant, legal counsel, or consultant, as well as steps it has taken to comply with paragraph (b)(2)(i) of this section, and provide the CFPB with a copy of such written account upon request or demand of the CFPB.

§ 1070.43 Disclosure of confidential information to law enforcement agencies and other government agencies.

(a) *Required disclosure of confidential information to government agencies.* The CFPB shall:

(1) Disclose a draft of a report of examination of a supervised financial institution prior to its finalization, in accordance with 12 U.S.C. 5515(e)(1)(C), and disclose a final report of examination, including any and all revisions made to such a report, to a federal or state agency with jurisdiction over that supervised financial institution, provided that the CFPB receives from the agency reasonable assurances as to the confidentiality of the information disclosed; and

(2) Disclose confidential consumer complaint information to a federal or state agency to facilitate preparation of reports to Congress required by 12 U.S.C. 5493(b)(3)(C) and to facilitate the CFPB's supervision and enforcement activities and its monitoring of the market for consumer financial products and services, provided that the agency shall first give written assurance to the CFPB that it will maintain such information in a manner that conforms to the standards that apply to federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity.

(b) *Discretionary disclosure of confidential information to government agencies.*

(1) Upon receipt of a written request that contains the information required by paragraph (b)(2) of this paragraph, the CFPB may, in its sole discretion, disclose confidential information to a federal or state agency to the extent that disclosure of the information is relevant to the exercise of the agency's statutory or regulatory authority or, with respect to the disclosure of confidential supervisory information, to a federal or state agency having jurisdiction over a supervised financial institution.

(2) To obtain access to confidential information pursuant to paragraph (b)(1) of this section, an authorized officer or employee of the agency shall submit a written request to the General Counsel, who shall act upon the request in consultation with the CFPB's Associate Director for Supervision and Enforcement or other appropriate CFPB personnel. The request shall include the following:

(i) A description of the particular information, kinds of information, and where possible, the particular documents to which access is sought;

(ii) A statement of the purpose for which the information will be used;

(iii) A statement identifying the agency's legal authority for requesting the documents;

(iv) A statement as to whether the requested disclosure is permitted or restricted in any way by applicable law or regulation; and

(v) A commitment that the agency will maintain the requested confidential information in a manner that conforms to the standards that apply to federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the CFPB may impose.

(c) *State requests for information other than confidential information.* A request or demand by a state agency for information or records of the CFPB other than confidential information shall be made and considered in accordance with the rules set forth elsewhere in this part.

(d) *Negotiation of standing requests.* The CFPB may negotiate terms governing the exchange of confidential information with federal or state agencies on a standing basis, as appropriate.

§ 1070.44 Disclosure of confidential consumer complaint information.

Nothing in this part shall limit the discretion of the CFPB, to the extent permitted by law, to disclose confidential consumer complaint information as it deems necessary to investigate, resolve, or otherwise respond to consumer complaints or inquiries concerning financial institutions or consumer financial products and services.

§ 1070.45 Affirmative disclosure of confidential information.

(a) The CFPB may disclose confidential investigative information and other confidential information, in accordance with applicable law, as follows:

(1) To a CFPB employee, as that term is defined in § 1070.2 of this part and in accordance with § 1070.41 of this subpart;

(2) To either House of the Congress or to an appropriate committee or subcommittee of the Congress, as provided by 12 U.S.C. 5562(d)(2);

(3) In investigational hearings and witness interviews, as is reasonably necessary, at the discretion of the CFPB;

(4) In an administrative or court proceeding to which the CFPB is a party. In the case of confidential investigatory material that contains any trade secret or privileged or confidential commercial or financial information, as claimed by designation by the submitter of such material, or confidential supervisory information, the submitter may seek an appropriate protective or *in camera* order prior to disclosure of such material in a proceeding;

(5) To law enforcement and other government agencies in accordance with this subpart; or

(6) As required under any other applicable law.

§ 1070.46 Other disclosures of confidential information.

(a) To the extent permitted by law and as authorized by the Director in writing, the CFPB may disclose confidential information other than as set forth in this subpart.

(b) Prior to disclosing confidential information pursuant to paragraph (a) of this section, the CFPB may, as it deems appropriate under the circumstances, provide written notice to the person to whom the confidential information pertains that the CFPB intends to disclose its confidential information in accordance with this section.

(c) The authority of the Director to disclosure confidential information pursuant to paragraph (a) shall not be delegated. However, a person authorized to perform the functions of the Director in accordance with law may exercise the authority of the Director as set forth in this section.

§ 1070.47 Other rules regarding the disclosure of confidential information.

(a) *Further disclosure prohibited.*

(1) All confidential information made available under this subpart shall remain the property of the CFPB, unless the General Counsel provides otherwise in writing.

(2) Except as set forth in this section, no supervised financial institution, federal or state agency, any officer, director, employee or agent thereof, or any other person to whom the confidential information is made available under this subpart, may further disclose such confidential information without the prior written permission of the General Counsel.

(3) A supervised financial institution, federal or state agency, any officer, director, employee or agent thereof, or any other person to whom the CFPB's confidential information is made available under this subpart, that receives from a third party a legally enforceable demand or request for such confidential information (including but not limited to, a subpoena or discovery request or a request made pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or any state analogue to such statutes) should:

(i) Inform the General Counsel of such request or demand in writing and provide the General Counsel with a copy of such request or demand as soon as practicable after receiving it;

(ii) In the case of a request made pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or any state analogue to such statutes, advise the requester that:

(A) The confidential information sought may not be disclosed insofar as it is the property of the CFPB; and

(B) Any request for the disclosure of such confidential information is properly directed to the CFPB pursuant to its regulations set forth in this part.

(iii) In the case of all other types of requests or demands, consult with the General Counsel before complying with the request or demand, and to the extent applicable:

(A) Give the CFPB a reasonable opportunity to respond to the demand or request;

(B) Assert all reasonable and appropriate legal exemptions or privileges that the CFPB may request be asserted on its behalf; and

(C) Consent to a motion by the CFPB to intervene in any action for the purpose of asserting and preserving any claims of confidentiality with respect to any confidential information.

(4) Nothing in this section shall prevent a supervised financial institution, federal or state agency, any officer, director, employee or agent thereof, or any other person to whom the information is made available under this subpart from complying with a legally valid and enforceable United States federal court order compelling production of the CFPB's confidential information or, if compliance is deemed compulsory, with a request or demand from either House of the Congress or a duly authorized committee of the Congress. To the extent that compulsory disclosure of confidential information occurs as set forth in this paragraph, the

producing party shall use its best efforts to ensure that the requestor secures an appropriate protective order or, if the requestor is a legislative body, use its best efforts to obtain the commitment or agreement of the legislative body that it will maintain the confidentiality of the confidential information.

(5) No person obtaining access to confidential information pursuant to this subpart may make a personal copy of any such information, and no person may remove confidential information from the premises of the institution or agency in possession of such information except as permitted by specific language in this regulation or by the CFPB.

(b) *Additional conditions and limitations.* The CFPB may impose any additional conditions or limitations on disclosure or use under this subpart that it determines are necessary.

(c) *Non-waiver.* The provision by the CFPB of any confidential information pursuant to this subpart does not constitute a waiver, or otherwise affect, any privilege any agency or person may claim with respect to such information under federal law.

Subpart E—The Privacy Act

§ 1070.50 Purpose and scope; definitions.

(a) This subpart implements the provisions of the Privacy Act of 1974, 5 U.S.C. 552a (the ''Privacy Act''). The regulations apply to all records maintained by the CFPB and which are retrieved by an individual's name or personal identifier. The regulations set forth the procedures for requests for access to, or amendment of, records concerning individuals that are contained in systems of records maintained by the CFPB. These regulations should be read in conjunction with the Privacy Act, which provides additional information about this topic.

(b) For purposes of this subpart, the following definitions apply:

(1) The term *Chief Privacy Officer* means the Chief Information Officer of the CFPB or any CFPB employee to whom the Chief Information Officer has delegated authority to act under this part;

(2) The term *guardian* means the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction;

(3) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(4) *Maintain* includes maintain, collect, use, or disseminate;

(5) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voiceprint or a photograph;

(6) *Routine use* means the disclosure of a record that is compatible with the purpose for which it was collected;

(7) *System of records* means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(8) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

§ 1070.51 Authority and responsibilities of the Chief Privacy Officer.

The Chief Privacy Officer is authorized to:

(a) Respond to requests for access to, accounting of, or amendment of records contained in a system of records maintained by the CFPB;

(b) Approve the publication of new systems of records and amend existing systems of record; and

(c) File any necessary reports related to the Privacy Act.

§ 1070.52 Fees.

(a) *Copies of records.* The CFPB shall provide the requester with copies of records requested pursuant to section 1070.53 of this subpart at the same cost charged for duplication of records under § 1070.22 of this part.

(b) *No fee.* The CFPB will not charge a fee if:

(1) Total charges associated with a request are less than $5, or

(2) The requester is a CFPB employee or former employee, or an applicant for employment with the CFPB, and request pertains to that employee, former employee, or applicant.

§ 1070.53 Request for access to records.

(a) *Procedures for making a request for access to records.* An individual's requests for access to records that pertain to that individual (or to the individual for whom the requester serves as guardian) may be submitted to the CFPB in writing or by electronic means.

(1) If submitted in writing, the request shall be labeled ''Privacy Act Request'' and shall be addressed to the Chief Privacy Officer, Bureau of Consumer Financial Protection, 1801 L Street, NW., Washington, DC 20036.

(2) If submitted by electronic means, the request shall be labeled ''Privacy Act Request'' and the request shall be submitted as set forth at the CFPB's Web site, *http://www.consumerfinance.gov.*

(b) *Content of a request for access to records.* A request for access to records shall include:

(1) A statement that the request is made pursuant to the Privacy Act;

(2) The name of the system of records that the requester believes contains the record requested, or a description of the nature of the record sought in detail sufficient to enable CFPB personnel to locate the system of records containing the record with a reasonable amount of effort;

(3) Whenever possible, a description of the nature of the record sought, the date of the record or the period in which the requester believes that the record was created, and any other information that might assist the CFPB in identifying the record sought (*e.g.,* maiden name, dates of employment, account information, etc.).

(4) Information necessary to verify the requester's identity pursuant to paragraph (c) of this section;

(5) The mailing or email address where the CFPB's response or further correspondence should be sent.

(c) *Verification of identity.* To obtain access to the CFPB's records pertaining to a requester, the requester shall provide proof to the CFPB of the requester's identity as provided below.

(1) In general, the following will be considered adequate proof of a requester's identity:

(i) A photocopy of two forms of identification, including one form of identification that bears the requester's photograph, and one form of identification that bears the requester's signature;

(ii) A photocopy of a single form of identification that bears both the requester's photograph and signature; or

(iii) A statement swearing or affirming the requester's identity and to the fact that the requester understands the penalties provided in 5 U.S.C. 552a(i)(3).

(2) Notwithstanding paragraph (c)(1) of this section, a designated official may require additional proof of the requester's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In

addition, if a requester seeks records pertaining to an individual in the requester's capacity as that individual's guardian, the requester shall be required to provide adequate proof of the requester's legal relationship before action will be taken on any request.

(d) *Request for accounting of previous disclosures.* An individual may request an accounting of previous disclosures of records pertaining to that individual in a system of records as provided in 5 U.S.C. 552a(c). Such requests should conform to the procedures and form for requests for access to records set forth in subsection (a) and (b) of this section.

§ 1070.54 CFPB procedures for responding to a request for access.

(a) *Acknowledgment and response.* The CFPB will provide written acknowledgement of the receipt of a request within twenty (20) business days from the receipt of the request and will, where practicable, respond to each request within that twenty (20) day period. When a full response is not practicable within the twenty (20) day period, the CFPB will respond as promptly as possible.

(b) *Disclosure.*

(1) When the CFPB discloses information in response to a request, the CFPB will make the information available for inspection and copying during regular business hours as provided in § 1070.13 of this part, or the CFPB will mail it or email it the requester, if feasible, upon request.

(2) The requester may bring with him or her anyone whom the requester chooses to see the requested material. All visitors to the CFPB's buildings must comply with the applicable security procedures.

(c) *Denial of a request.* If the CFPB denies a request made pursuant to § 1070.53 of this subpart, it will inform the requester in writing of the reason(s) for denial and the procedures for appealing the denial.

§ 1070.55 Special procedures for medical records.

If an individual requests medical or psychological records pursuant to § 1070.53 of this subpart, the CFPB will disclose them directly to the requester unless the CFPB determines that such disclosure could have an adverse effect on the requester. If the CFPB makes that determination, the CFPB will provide the information to a licensed physician or other appropriate representative that the requester designates, who may disclose those records to the requester in a manner he or she deems appropriate.

§ 1070.56 Request for amendment of records.

(a) *Procedures for making request.*

(1) If an individual wishes to amend a record that pertains to that individual in a system of records, that individual may submit a request in writing or by electronic means to the Chief Privacy Officer, as set forth in section 1070.53(a). The request shall be labeled ''Privacy Act Amendment Request.''

(2) A request for amendment of a record must:

(i) Identify the system of records containing the record for which amendment is requested;

(ii) Specify the portion of that record requested to be amended; and

(iii) Describe the nature and reasons for each requested amendment.

(3) When making a request for amendment of a record, the CFPB will require a requester to verify his or her identity under the procedures set forth in § 1070.53(c) of this subpart, unless the requester has already done so in a related request for access or amendment.

(b) *Burden of proof.* A request for amendment of a record must explain why the requester believes the record is not accurate, relevant, timely, or complete. The requester has the burden of proof for demonstrating the appropriateness of the requested amendment, and the requester must provide relevant and convincing evidence in support of the request.

§ 1070.57 CFPB review of a request for amendment of records.

(a) *Time limits.* The CFPB will acknowledge a request for amendment of records within ten (10) business days after it receives the request. In the acknowledgment, the CFPB may request additional information necessary for a determination on the request for amendment. The CFPB will make a determination on a request to amend a record promptly.

(b) *Contents of response to a request for amendment.* When the CFPB responds to a request for amendment, the CFPB will inform the requester in writing whether the request is granted or denied, in whole or in part. If the CFPB grants the request, it will take the necessary steps to amend the record and, when appropriate and possible, notify prior recipients of the record of its action. If the CFPB denies the request, in whole or in part, it will inform the requester in writing:

(1) Why the request (or portion of the request) was denied;

(2) That the requester has a right to appeal; and

(3) How to file an appeal.

§ 1070.58 Appeal of adverse determination of request for access or amendment.

(a) *Appeal.* A requester may appeal a denial of a request made pursuant to §§ 1070.53 or 1070.56 of this subpart within ten (10) business days after the CFPB notifies the requester that it has denied the request.

(b) *Content of Appeal.* A requester may submit an appeal in writing or by electronic means as set forth in section 1070.53(a). The appeal shall be addressed to the General Counsel and labeled ''Privacy Act Appeal.'' The appeal must also:

(1) Specify the background of the request; and

(2) Provide reasons why the requester believes the denial is in error.

(c) *Determination.* The General Counsel will make a determination as to whether to grant or deny an appeal within thirty (30) business days from the date it is received, unless the General Counsel extends the time for good cause.

(1) If the General Counsel grants an appeal regarding a request for amendment, he or she will take the necessary steps to amend the record and, when appropriate and possible, notify prior recipients of the record of its action.

(2) If the General Counsel denies an appeal, he or she will inform the requester of such determination in writing, including the reasons for the denial, and the requester's right to file a statement of disagreement and to have a court review its decision.

(d) *Statement of disagreement.*

(1) If the General Counsel denies an appeal regarding a request for amendment, a requester may file a concise statement of disagreement with the denial. The CFPB will maintain the requester's statement with the record that the requester sought to amend and any disclosure of the record will include a copy of the requester's statement of disagreement.

(2) When practicable and appropriate, the CFPB will provide a copy of the statement of disagreement to any prior recipients of the record.

§ 1070.59 Restrictions on disclosure.

The CFPB will not disclose any record about an individual contained in a system of records to any person or agency without the prior written consent of that individual unless the disclosure is authorized by 5 U.S.C. 552a(b). Disclosures authorized by 5 U.S.C. 552a(b) include disclosures that are compatible with one or more routine uses that are contained within the CFPB's Systems of Records Notices, which are available on the CFPB's Web

site, at *http://www.consumerfinance.gov.*

§ 1070.60 Exempt records.

(a) *Exempt systems of records.* Pursuant to 5 U.S.C. 552a(k)(2), the CFPB exempts the systems of records listed below from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G)–(H), and (f), and §§ 1070.53 through 1070.59 of this subpart, to the extent that such systems of records contain investigatory materials compiled for law enforcement purposes, provided, however, that if any individual is denied any right, privilege, or benefit to which he or she would otherwise be entitled under federal law, or for which he or she would otherwise be eligible as a result of the maintenance of such material, such material shall be disclosed to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the CFPB under an express promise that the identity of the source would be held in confidence:

(1) CFPB.002 Depository Institution Supervision Database

(2) CFPB.003 Non-Depository Institution Supervision Database

(3) CFPB.004 Enforcement Database

(b) *Information compiled for civil actions or proceedings.* This regulation does not permit an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1070.61 Training; rules of conduct; penalties for non-compliance.

(a) *Training.* The Chief Privacy Officer shall institute a training program to instruct CFPB employees and employees of Government contractors covered by 5 U.S.C. 552a(m), who are involved in the design, development, operation or maintenance of any CFPB system of records, on a continuing basis with respect to the duties and responsibilities imposed on them and the rights conferred on individuals by the Privacy Act, the regulations in this part, and any other related regulations. Such training shall provide suitable emphasis on the civil and criminal penalties imposed on the CFPB and the individual employees by the Privacy Act for non-compliance with specified requirements of the Act as implemented by the regulations in this subpart.

(b) *Rules of conduct.* The following rules of conduct are applicable to employees of the CFPB (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors), who are involved in the design, development, operation or maintenance of any system of records, or in maintain any records, for or on behalf of the CFPB.

(1) The head of each office of the CFPB shall be responsible for assuring that employees subject to such official's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and the regulations in this subpart, and that such employees are made aware of their individual and collective responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no system of records is maintained without public notice.

(2) Employees of the CFPB involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record shall:

(i) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the CFPB;

(ii) Collect information, to the extent practicable, directly from the individual to whom it relates;

(iii) Inform each individual asked to supply information, on the form used to collect the information or on a separate form that can be retained by the individual—

(A) The authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) The principal purpose or purposes for which the information is intended to be used;

(C) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a(e)(4)(D); and

(D) The effects on the individual, if any, of not providing all or any part of the requested information.

(iv) Not collect, maintain, use or disseminate information concerning an individual's religious or political beliefs or activities or membership in associations or organizations, unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(v) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(vi) Assure that no records maintained in a CFPB system of records are disseminated without the permission of the individual about whom the record pertains, except when authorized by 5 U.S.C. 552a(b);

(vii) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the CFPB;

(viii) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552a(b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes; and

(ix) Assure that an accounting is kept in the prescribed form, of all dissemination of personal information outside the CFPB, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 or subpart B of this part.

(3) The head of each office of the CFPB shall, at least annually, review the record systems subject to their supervision to insure compliance with the provisions of the Privacy Act of 1974 and the regulations in this subpart.

§ 1070.62 Preservation of records.

The CFPB will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, proceeding, or lawsuit.

§ 1070.63 Use and collection of social security numbers.

The CFPB will ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

Dated: July 22, 2011.

Sam Valverde,

Deputy Executive Secretary, Department of the Treasury.

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S. 1103/P.L. 112–24
To extend the term of the incumbent Director of the Federal Bureau of Investigation. (July 26, 2011; 125 Stat. 238)
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